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COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

OVERVIEW OF THE FEDERAL TAX SYSTEM

INCLUDING DATA ON TAX AND REVENUE MEASURES WITHIN THE JURISDICTION OF THE COMMITTTEE ON WAYS AND MEANS

1991 EDITION

APRIL 10, 1991

Prepared for the use of Members of the Committee on Ways and Means by members of its staff. This document has not been officially approved by the Committee and may not reflect the views of its Members

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COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS
DAN ROSTENKOWSKI, ILLINOIS, *Chairman*

ROBERT J. LEONARD, *Chief Counsel and Staff Director*

This document was prepared by the majority staff of the Committee on Ways and Means and is issued under the authority of Chairman Dan Rostenkowski. This document has not been reviewed or officially approved by the Members of the Committee.

LETTER OF TRANSMITTAL

House of Representatives,
Committee on Ways and Means,
Washington, D.C., April 10, 1991.

The Honorable Dan Rostenkowski,
Chairman, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Chairman: Upon your election as Chairman of the Committee on Ways and Means in 1981, you instructed the staff to prepare a resource document on programs within the Committee's jurisdiction. That year and annually since, the Committee has published the "Green Book," which presents background material and statistical data on Social Security, Medicare, trade adjustment assistance, unemployment compensation, Aid for Dependent Children, child support enforcement, Supplemental Security Income, the Title XX social services block grant program, child welfare, foster care, and adoption assistance. In 1987 and every other year thereafter, the Committee has published a trade resource document, "Overview and Compilation of U.S. Trade Statutes," which provides background material on the principal trade authorities within the Committee's jurisdiction. While initially intended for the use of the Members of the Committee and their staffs, these documents have become valuable resources for Members of Congress, Congressional staff, government officials at the Federal, State and local level, interested parties in the international trade community, academicians, public policy analysts, as well as the general public.

In 1990, the Committee published a new resource document, "Overview of the Federal Tax System," which presents background material and statistical data on the Federal tax system, thus completing your original mandate issued in 1981. On behalf of the staff, I am pleased to transmit to you and the other Members of the Committee on Ways and Means, the 1991 edition of the "Tax Green Book." This document was prepared by the Committee's staff with assistance from the staffs of the Joint Committee on Taxation, the Internal Revenue Service, the Congressional Research Service of the Library of Congress, and the Congressional Budget Office. The staff wishes to express its appreciation to the many individuals who contributed to the publication of this document. The tax overview is intended to complement the published overviews of trade and entitlement programs within the Committee's jurisdiction. As with these other publications, it is the staff's intention to republish this document periodically to update the analytical material and statistical data presented herein.

Suggestions by Members of Congress or other interested persons on how to improve this document as a resource tool would be welcomed and reflected in subsequent editions of this publication.

Sincerely,

Robert J. Leonard,
Chief Counsel and Staff Director.

PREFACE

This document has been prepared for the use of the Committee on Ways and Means by its staff with the assistance of the staffs of the Joint Committee on Taxation, the Congressional Research Service, and the Congressional Budget Office. The purpose of this publication is to outline the fundamentals of the Federal tax system. It is designed to be used as a sourcebook by Members of Congress, their staffs, and others who seek basic information about Federal taxes. The book is divided into nine parts.

Part I provides an overview of the legal and institutional structure underlying the Federal tax system. Part I explores the constitutional sources of Federal taxing power, as well as the role of each of the three branches of government—legislative, executive, and judicial—in developing Federal tax law. As part of its description of the role of the legislative branch, Part I outlines the jurisdictional prerogatives of the Committee on Ways and Means with respect to revenue-raising bills.

Part II provides a list of sources for further information concerning the Federal tax system for Members of Congress and staff who wish more information.

Part III summarizes the essential features of the Federal tax system.

Part IV includes historical tables showing the growth and the change in composition of Federal receipts since 1934.

Part V provides an overview of Federal tax expenditures.

Part VI summarizes the legislative histories of Federal tax legislation enacted since 1981 and provides other historical data.

Part VII is Internal Revenue Service Publication No. 1: "Your Rights as a Taxpayer." This publication summarizes the administrative and judicial avenues open to the taxpayer who wishes to dispute a tax assessment.

Part VIII is a Joint Committee on Taxation document that provides information on expiring tax provisions.

Part IX is a Congressional Research Service report on questions frequently asked by taxpayers.

This publication is intended to serve as a source of information about the Federal tax system. The exclusion of an item from this book carries no inference with respect to the Committee's jurisdiction over that item.

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PART I. OVERVIEW

Section 1. Constitutional Sources of Federal Taxing Power [1]

A. GENERAL

Congress is given the power to tax under Article I, Section 8, clause 1 of the United States Constitution:

> The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises to pay the Debts and provide for the common Defense and general Welfare of the United States.

The general taxing power under Article I, Section 8, clause 1 is limited in several respects. Under the last phrase of this clause:

> All Duties, Imposts and Excises shall be uniform throughout the United States

In addition, Article I, Section 9, clause 5 provides:

> No Tax or Duty shall be laid on Articles exported from any State.

And Article I, Section 9, clause 4 provides:

> No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken.

The uniformity required of excise taxes and other indirect taxes is a geographical limitation. That is, the subject matter must be taxed at the same rate wherever found, and the limit does not bar progressive rates and nongeographic classifications. *La Belle Ironworks* v. *United States,* 256 U.S. 377 (1921); *Knowlton* v. *Moore,* 178 U.S. 41 (1900); *Head Money Cases,* 112 U.S. 580 (1884).

B. PROPERTY TAXES

A tax on real or personal property is a direct tax. Accordingly, to survive constitutional scrutiny under Article I, Section 9, such a tax must be apportioned among the several States in accordance with the census. There is presently no Federal property tax. However, in the past, Congress has exercised its authority to levy an apportioned tax on real property. In 1813, Congress enacted a direct tax on property totalling $3 million, which the statute apportioned among the 18 States; within each State, the statute apportioned among the counties or parishes of that State. For example, $369,018.44 was apportioned to Virginia, and $6,354.50 of that amount apportioned to Fairfax County. (Act of August 2, 1813, 2 Stat. 53.) In 1861, Congress again enacted a direct tax on property. (Act of August 5, 1861, Section 87, 12 Stat. 295.) This measure raised a total of $20 million and was apportioned among the States, territories, and the District of Columbia.

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[1] The discussion of constitutional sources of Federal tax power is adapted from "Federal Tax Power," CRS Report, Thomas B. Ripy, November 22, 1983. Those interested in the topic might also consult "Federal Taxation of Income, Estates, and Gifts," Boris I. Bittker, Warren Gorham and Lamont (New York, 1981); and "Basic Federal Income Taxation," Third Edition, William D. Andrews, Little Brown & Co. (Boston, 1985).

C. Income Taxes

In 1895, the Supreme Court held that the individual income tax levied on income from property was a direct tax on property. Accordingly, the Court held that the income tax was impermissible under the Constitution unless apportioned uniformly as required by Article I, Section 9. (*Pollock* v. *Farmers Loan and Trust Co.,* 157 U.S. 429, *aff'd* 158 U.S. 601.)

The practical effect of *Pollock* was to bar enactment of an individual income tax until the passage of the 16th amendment to the Constitution. The constitutional bar, of course, could have been circumvented either by restricting the income tax to earned income, or by apportioning the tax among the States according to population. The first course was politically infeasible; the second administratively impractical.

In February 1913, the 16th amendment to the Constitution was approved, providing:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The Revenue Act of 1913, enacted after the effective date of the 16th amendment, provided an individual income tax which was upheld against a number of constitutional challenges in *Brushaber* v. *Union Pacific R.R.,* 240 U.S. 1 (1916).

D. Other Taxes

Today, while the most significant source of Federal revenue is the individual income tax, Congress has used its taxing authority to raise revenue from a wide variety of other sources as well. Sources of Federal revenue include individual and corporate income taxes, taxes on the transfers of wealth (gift and estate taxes), payroll taxes on wages, and various excise taxes (including taxes on the production or sale of alcohol, tobacco, telephone services, gasoline, and many other articles). Tables 1 and 2 of Part IV, "Historical Tables," present current summaries of the revenue raised from each major source of Federal taxation. A listing of current Federal excise taxes and rates is included in section 5 of Part III.

Generally, the Supreme Court has interpreted Congress' power to tax under Article I, Section 8 as a broad one. The Court has described this power as "exhaustive," and embracing "every conceivable power of taxation." (*Brushaber,* supra.) Specifically, the Court has upheld the power of Congress to tax a broad variety of activities, including transfers of wealth at death (*Knowlton* v. *Moore,* 178

U.S. 41 (1900)), transfers by gift (*Bromley* v. *McCugh,* 280 U.S. 124 (1929), the use of property (*Hylton* v. *United States,* 3 Dall. (U.S. 171 (1976), production of sugar with the tax measured by gross receipts (*Spreckels Sugar Refining Co.* v. *McClain,* 192 U.S. 397 (1904)) and a tax on the production of mines, measured by gross receipts (*Stanton* v. *Baltic Mining,* 240 U.S. 103 (1916)).

E. CONSTRAINTS OF FEDERALISM

Under Article 1, Section 9, Congress may not tax the exports from any States. In addition to this express constraint, the courts have found in the principles of federalism an implied doctrine of State immunity from Federal taxation. In its earliest form, this doctrine was applied broadly and was invoked to exclude from Federal taxation such items as the salaries of State officials (*Collector* v. *Day,* 11 Wall. (78 U.S. 113 (1871)). More recent decisions, however, have narrowed the scope of the doctrine so that it applies only to Federal taxes that directly effect a traditional State governmental activity or function. (*Graves* v. *New York ex rel. O'Keefe,* 306 U.S. 466 (1939), *Ohio* v. *Helvering,* 292 U.S. 360 (1934), *South Carolina* v. *United States,* 199 U.S. 437 (1905).)

The most recent State challenge to the Federal taxing power was brought by South Carolina (joined by the National Governors' Association), against a provision in the Tax Equity and Fiscal Responsibility Act of 1982, under which a Federal tax exemption is not available for interest earned on State and local government bonds unless the bonds are issued in registered form (as opposed to bearer form). South Carolina challenged the provision as a violation of the Tenth Amendment to the United States Constitution and the doctrine of intergovernmental tax immunity. In *South Carolina* v. *Baker,* 108 S. Ct. 1355 (1988), the Supreme Court held that the registration requirement did not violate the Tenth Amendment or the Constitutional principles of federalism.

F. RETROACTIVITY

Retroactive changes in the tax law have on occasion been challenged as an unconstitutional deprivation of property without due process of law in violation of the due process clause of the fifth amendment. It is well settled that tax law changes that are retroactive within the same year of enactment do not violate constitutional guarantees of due process. See *Brushaber* v. *Union Pacific R.R.,* 240 U.S. 1 (1916). The courts have also generally rejected due process challenges to tax law changes that are retroactive to prior years where taxpayers might have reasonably expected the retroactive change. See, e.g., *Sidney* v. *Commissioner,* 273 F.2d 928 (2d Cir. 1960).

There have been a few cases in the transfer tax areas (gift, estate and inheritance), where the Court has found that retroactive legislation violated due process. See, for example, *Nichols* v. *Coolidge,* 274 U.S. 531 (1927), holding that the estate tax imposed on transfers prior to the act's enactment was unconstitutional. See also *Untermeyer* v. *Anderson,* 276 U.S. 440 (1928), holding that a gift tax imposed on gifts made prior to the act was unconstitutional. Some authorities have suggested that the distinction between those statutes which have been upheld and those rejected lies in the notice given the taxpayer as to potential changes in the tax law. If the taxpayer was or should have been aware of the possible modification, the law is likely to be upheld. On the other hand, if there is no way the taxpayer could have known that a particular activity might be taxed, retroactive taxation of that activity might be found to violate the taxpayer's right to due process.

Section 2. Role of the Legislative Branch

The vesting of "the power of the purse," or the control over public finance, in the hands of the elected representatives of the people lies at the very heart of the development of representative government in the Anglo-American tradition. The creation of the Committee on Ways and Means in the English House of Commons in 1641 was an important development in legislative efforts to restrain the financial prerogatives of the Crown. Later, the fact that the British were "imposing taxes on us, without our consent" was cited in the Declaration of Independence as one of the "repeated injuries and usurpations" which led the Colonies to declare themselves to be "Free and Independent States."

Under the Articles of Confederation, Congress was empowered to borrow money, regulate coinage and emit bills of credit. However, Congress could only request that the States collect taxes and remit them to a common Treasury. Under this system, the fiscal situation of the Nation deteriorated. The first power granted to the Congress in Article I, Section 8 of the Constitution is the "Power To lay and collect Taxes, Duties, Imposts and Excises."

A. REVENUE ORIGINATING PREROGATIVE OF THE HOUSE OF REPRESENTATIVES

While the Constitutional Convention debated adopting the British model in which the House of Lords could not amend revenue legislation sent to it from the House of Commons, the Constitution proposed by the Convention and later ratified by the States provides that "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills." (Article I, Section 7, clause 1.)

In order to pass constitutional scrutiny under this "origination clause," a tax bill must be passed first by the House of Representatives. After the House has completed action on a bill and approved it by a majority vote, the bill is transmitted to the Senate for formal action. The Senate may have already reviewed issues raised by the bill before its transmission. For example, the Senate Committee on Finance frequently holds hearings on tax legislative proposals before the legislation embodying those proposals is transmitted from the House of Representatives. On occasion, the Senate will consider a revenue bill in the form of a Senate or "S." bill, and then await passage of a revenue ("H.R.") bill from the House, to which it then will add or substitute provisions of the "S." bill as an amendment to the "H.R." bill and send the "H.R." bill back to the House of Representatives for its concurrence or conference on the differing provisions.

B. HOUSE EXERCISE OF ITS CONSTITUTIONAL PREROGATIVE: "BLUE SLIPPING"

When a Senate bill or amendment to a House bill infringes on the constitutional prerogative of the House to originate revenue measures, that infringement may be raised in the House as a matter of privilege. That privilege has also been asserted on a Senate amendment to a House amendment to a Senate bill (see 96th Congress, 1st Session, November 8, 1979, Congressional Record p. H10425).

Note that the House in its sole discretion may determine that legislation passed by the Senate infringes on its prerogative to originate revenue legislation. In the absence of such determination by the House, the Federal courts are occasionally asked to rule a certain revenue measure to be unconstitutional as not having originated in the House. (See most recently, *U.S.* v. *Munoz-Flores*. Doc. No. 88-1932 (May 21, 1990).)

Senate bills or amendments to nonrevenue bills infringe on the House's prerogative even if they do not raise or reduce revenue. Such infringements are referred to as "revenue affecting." Thus, any import ban which could result in lost customs revenue must originate in the House (100th Congress, 1st Session, July 30, 1987; 100th Congress, 2d Session, June 16, 1988, Congressional Record p. H4356).

Offending bills and amendments are returned to the Senate through the passage in the House of a House Resolution which states that the Senate provision: "in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privilege of the House and that such bill be respectfully returned to the Senate with a message communicating this resolution" (e.g., 100th Congress, 1st Session, July 30, 1987, Congressional Record p. H6808). In other cases, the Committee of the Whole House has passed a similar or identical House bill in lieu of a Senate bill or amendment (e.g., 91st Congress, 2d Congress, May 11, 1970, Congressional Record pp. H14951-14960). The Committee on Ways and Means has also reported bills to the House which were approved and sent to the Senate in lieu of Senate bills (e.g., 93d Congress, 1st Session, November 6, 1973, Congressional Record pp. 36006-36008). In other cases, the Senate has substituted a House bill or delayed action on its own legislation to await a proper revenue affecting bill or amendment from the House (see 95th Congress, 2d Session, September 22, 1978, Congressional Record p. H30960; January 22, 1980, Congressional Record p. S107).

A House Resolution seeking to invoke Article I, Section 7 has been tabled on just one occasion. Citing significant economic problems facing the nation during the height of the Vietnam War, a divided House tabled an objection to the Senate's infringement on House prerogatives (90th Congress, 2d Session, June 20, 1968, Congressional Record pp. H17977-17979).

BLUE SLIP RESOLUTIONS—97TH CONGRESS THROUGH 101ST CONGRESS

[Resolutions passed by the House returning to the Senate bills passed in violation of the origination clause of the United States Constitution (Clause 1, Section 7 of Article 1)]

H. Res., sponsor, and date of House passage	Description of Senate action (and related House action, if any)
101st Congress	
H. Res. 287 Mr. Cardin Nov. 9, 1989.	On August 4, 1989, the Senate passed S. 686, the Oil Pollution Liability and Compensation Act of 1989. This legislation contained a provision which would have allowed a credit against the oil spill liability tax for amounts transferred from the Trans-Alaska Pipeline Trust Fund to the Oil Spill Liability Trust Fund.
H. Res. 177 Mr. Rostenkowski June 15, 1989.	On Apr. 19, 1989, the Senate passed S. 774, the Financial Institution Reform, Recovery and Enforcement Act of 1989. This legislation would create two corporations to administer the financial assistance under the bill: the Resolution Trust Corporation and the Resolution Financing Corporation. S. 774 would have conferred tax-exempt status to these two corporations. Without these two tax provisions, these two corporations would be taxable entities under the Federal income tax.
100th Congress	
H. Res. 235 Mr. Rostenkowski July 30, 1987.	On Mar. 30, 1987, the Senate passed S. 829, legislation which would authorize appropriations for the U.S. International Trade Commission, the U.S. Customs Service, and the Office of the U.S. Trade Representative for fiscal year 1988, and for other purposes. In addition, the bill contained a provision relating to imports from the Soviet Union which amends provisions of the Tariff Act of 1930.
H. Res. 474 Mr. Rostenkowski June 16, 1988 (see also H.R. 3391).	On Oct. 6, 1987, the Senate passed S. 1748, legislation which would prohibit the importation into the United States of all products from Iran. (The House passed H.R. 3391, which included similar provisions, on Oct. 6, 1987.)
H. Res. 479 Mr. Rostenkowski June 21, 1988 (see also H.R. 2792 and H.R. 4333).	On May 13, 1987, the Senate passed S. 727, legislation which would clarify Indian treaties and Executive orders with respect to fishing rights. This legislation dealt with the tax treatment of income derived from the exercise of Indian treaty fishing rights. (The House passed H.R. 2792, which included similar provisions, on June 20, 1988, under suspension of the rules and was enacted into law as part of Public Law 100–647, H.R. 4333.)
H. Res. 544 Mr. Rostenkowski Sept. 23, 1988 (see also H.R. 1154).	On Sept. 9, 1988, the Senate passed S. 2662, the Textile and Apparel Trade Act of 1988. This legislation would impose global import quotas on textiles and footwear products.

BLUE SLIP RESOLUTIONS—97TH CONGRESS THROUGH 101ST CONGRESS—Continued

H. Res., sponsor, and date of House passage	Description of Senate action (and related House action, if any)
H. Res. 552 Mr. Rostenkowski Sept. 28, 1988.	On Sept. 9, 1988, the Senate passed S. 2763, the Genocide Act of 1988. This legislation contained a ban on the importation of all oil and oil products from Iraq.
H. Res. 603 Mr. Rostenkowski Oct. 21, 1988.	On Mar. 30, 1988, the Senate passed S. 2097, the Uranium Mill Tailings Remedial Action Amendments of 1987. This legislation would establish a Federal fund to assist in the financing of reclamation and other remedial action at currently active uranium and thorium processing sites and would increase the demand for domestic uranium. The fund would be financed in part by what are called "mandatory fees" which are equal to $22 per kilogram for uranium contained in fuel assemblies initially loaded into civilian nuclear power reactors during calendar years 1989–1993. In addition, S. 2097 would impose charges on domestic utilities that use foreign-source uranium in new fuel assemblies loaded in their nuclear reactors.
H. Res. 604 Mr. Rostenkowski Oct. 21, 1988.	On Aug. 8, 1988, the Senate passed H.R. 1315, legislation which would authorize appropriations for the Nuclear Regulatory Commission for fiscal years 1988 and 1989. Title IV of the legislation would, among other things, establish a Federal fund to assist in the financing of reclamation and other remedial action at currently active uranium and thorium processing sites and would assist the domestic uranium industry by increasing the demand for domestic uranium. The fund would be financed in part by what are called "mandatory fees" equal to $72 per kilogram of uranium contained in fuel assemblies initially loaded into civilian nuclear power reactors on or after Jan. 1, 1988. These fees would be paid by licensees of civilian nuclear power reactors and would be in place until $1 billion had been raised.
99th Congress	
H. Res. 283 Mr. Rostenkowski Oct. 1, 1985.	On Sept. 26, 1985, the Senate passed S. 1712, legislation which would extend the 16-cents-per-pack cigarette excise tax rate for 45 days, through Nov. 14, 1985. (The House passed H.R. 3452, which included a similar extension, on Sept. 30, 1985.)
H. Res. 562 Mr. Rostenkowski Sept. 25, 1986.	The Senate passed S. 638, legislation to provide for the sale of Conrail to the Norfolk Southern Railroad. The legislation contained numerous provisions relating to the tax treatment of the sale of Conrail.
98th Congress	
H. Res. 195 Mr. Rostenkowski June 17, 1983.	On Apr. 21, 1983, the Senate passed S. 144, a bill to insure the continued expansion of international market opportunities in trade, trade in services and investment for the United States, and for other purposes.

BLUE SLIP RESOLUTIONS—97TH CONGRESS THROUGH 101ST CONGRESS—Continued

H. Res., sponsor, and date of House passage	Description of Senate action (and related House action, if any)
97th Congress	
None.	

C. THE COMMITTEE ON WAYS AND MEANS: PREROGATIVE UNDER THE RULES OF THE HOUSE OVER "REVENUE MEASURES GENERALLY"

In the House of Representatives, tax legislation is initiated by the Committee on Ways and Means. The Committee's exclusive prerogative to report "revenue measures generally" is provided by Rule X(1)(v) of the Rules of the House of Representatives. The jurisdiction of the Committee on Ways and Means under Rule X(1)(v) is protected through the exercise of Rule XXI(5)(b) which states:

> No bill or joint resolution carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures, nor shall an amendment in the House or proposed by the Senate carrying a tax or tariff measure be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on a tax or tariff measure in any such bill, joint resolution, or amendment thereto may be raised at anytime.

Based on the precedents of the House, especially those involving Rule XXI(5)(b), the following statements can be made concerning points of order made under the rule.

1. *Timeliness.*—The point of order can be raised at any point during consideration of the bill. However, that section of the bill in which the "tax or tariff" provision lies must either have been previously read or currently open for amendment. A point of order may not be raised after the Committee of the Whole has risen and reported the bill to the House. A point of order against an amendment must be made prior to its adoption.

2. *Effect.*—If a point of order is sustained, the effect is that the provision in the bill or amendment is automatically deleted.

3. *Substance over form.*—A provision need not involve an amendment to the Internal Revenue Code (IRC) or the Harmonized Tariff Schedule (HTS) in order to be determined to be a "tax or tariff" provision.

4. *Revenue decreases and increases.*—A provision need not raise revenue in order to be found to be a "tax or tariff measure." Provisions which would have the effect of decreasing revenues are covered by the rule. Similarly, provisions which could have a revenue effect have been determined to be covered by the rule.

The following is a detailed listing of each of the occasions on which points of order relating to the rule have been sustained:

POINTS OF ORDER—HOUSE RULE XXI, CLAUSE 5, PARAGRAPH (B)

CHRONOLOGICAL LIST

September 21, 1983

H.R. 1036, Community Renewal Employment Act

The Chair sustained a point of order against a motion to recommit a bill to a committee without jurisdiction over revenue measures (the Committee on Education and Labor), and to report the bill back to the House with tax provisions relating to "enterprise zones." The motion was ruled to violate House Rule XVI, Clause 7, and House Rule XXI Clause 5(b). [98–1, p. H 7244]

October 27, 1983

H.R. 4139, Conference Report to accompany the Appropriations, Treasury, Postal Service, Executive Office of the President and certain independent agencies Appropriation, 1984

The Chair sustained a point of order against section 511 which would have prohibited the Customs Service from enforcing a provision of law permitting agricultural products to enter the United States duty-free under the Caribbean Basin Initiative. The Chair ruled that the effect of the provision was to cause duties on certain imports to be imposed where none is required and to require collections of revenue contrary to existing tariff laws and that, as a result, section 511 was a tariff provision rather than a limitation of appropriated funds. [98–1, p. H 8717]

September 12, 1984

H.R. 5798, Conference Report to accompany the Appropriations, Treasury, Postal Service, Executive Office of the President and certain independent agencies Appropriation, 1985

A point of order was raised against a Senate amendment, No. 24 which provided that "none of the funds appropriated by this act or any other act" shall be used to impose of assess the manufacturer's excise tax on sporting goods. The point of order specifically stated that the term "tax" and "tariff" under House Rule XXI, Clause 5(b), included provisions such as these contained in the amendment which would result less revenue spent than under the operation of existing law. The point of order was conceded and sustained. [98–2, p. H 9395–9396]

September 12, 1984

H.R. 5798, Conference Report to accompany the Appropriations, Treasury, Postal Service, Executive Office of the President and certain independent agencies Appropriation, 1985

A point of order was raised against a Senate amendment, No. 26 which amended the tariff schedule of the United States (TSUS) to provide duty-free importation of a telescope for the University of

Arizona. The point of order was conceded and sustained. [98–2, p. H 9396]

September 12, 1984

H.R. 5798, Conference Report to accompany the Appropriations, Treasury, Postal Service, Executive Office of the President and certain independent agencies Appropriation, 1985

A point of order was raised against a Senate amendment, No. 92 which amended the existing customs law under the Tariff Act of 1930 with respect to seizures and forfeitures of property by the Customs Service. The point of order was conceded and sustained. [98–2, p. H 9407]

June 4, 1985

H.R. 1460, Anti-Apartheid Act of 1985

A point of order was raised against an amendment to prohibit the entry of South African Krugerrands or gold coins into the customs territory of the United States unless uniform 5 percent fee were paid. The point of order was sustained on the grounds that the fee was equivalent to a tariff uniform charge imposed at ports of entry with proceeds deposited in the Treasury. [99–1, p. H 3762]

July 11, 1985

H.R. 1555, International Security and Development Act of 1985

A point of order was raised against section 1208 which denied trade benefits to Afghanistan, provided for the denial of most favored nation status to Afghanistan and denied trade credits to Afghanistan. The point of order was conceded and sustained. [99–1, p. H 5489]

July 26, 1985

H.R. 3036, Appropriations, Treasury, Postal Service, and General Government Appropriation, 1986

A point of order was raised against section 106 which prohibited the use of funds to implement or enforce regulations imposing or collecting a tax on the interest deferral from entrance or accommodation fees paid by elderly residents of continuing care facilities (section 7872 of the Internal Revenue Code). The Chair sustained the point of order against the provision as a tax provision within the meaning of House Rule XXI, Clause 5(b). [99–1, p. H 6418]

October 24, 1985

H.R. 3500, Budget Reconciliation Act of 1985

A point of order was raised against section 6701 which had been reported from the Committee on the Budget containing a recommendation of the Committee on Merchant Marine and Fisheries. Section 6701 expanded tax benefits available to ship owners through the "capital construction fund" (section 7518 of the Internal Revenue Code), by permitting repatriation of foreign-source income to avoid U.S. taxes and expanding the definition of vessels eligible to establish such tax-exempt funds. [99–1, p. H 9189]

October 24, 1985

H.R. 3500, Budget Reconciliation Act of 1985

A point of order was raised against section 3113. The provision in the reconciliation bill reported from the Budget Committee contained a recommendation from the Committee on Education and Labor to exclude certain interest on obligations to Student Loan Marketing Association from Application of Internal Revenue Code (IRC), section 265 which denies a deduction for certain expenses and interest relating to the production of tax-exempt income. The point of order was sustained. [99–1, p. H 5310]

August 1, 1986

H.R. 5294, Appropriations, Treasury, Postal Service and General Government Appropriations, 1987

A point of order was raised against section 3 which prohibited the use of funds to implement regulations issued by the Department of the Treasury to implement section 274(d) of the Internal Revenue Code relating to the duty imposed on taxpayers to substantiate deductibility of certain expenses relating to travel, gifts, and entertainment.

The Chair sustained the point of order stating that a limitation otherwise in order under Clause 2(c), of House Rule XXI which "effectively and inherently either preclude[s] the IRS from collecting revenues otherwise due to be [owed] under provision of the Internal Revenue Code or require[s] the collection of revenue not legally due and owing constitutes a tax provision within the meaning of Rule XXI, Clause 5(b)."

The Chair also noted that when the point of order was raised that under the rule the point of order against the provision could be raised at any point during the consideration of the bill. [99–2, p. H 5310]

August 1, 1986

H.R. 5294, Appropriations, Treasury, Postal Service and General Government Appropriations, 1987

A point of order was raised against section 103 which denied funds to the Internal Revenue Service to impose vesting requirements for qualified pension funds more stringent than 4/40. As a result, legally collectible taxes on employer contributions to such plans would be indefinitely deferred. The point of order was conceded and sustained. [99–2, p. H 5311]

June 25, 1987

H.R. 3545, Budget Reconciliation Act of 1987

A point of order was raised against the section of the bill providing that "all earnings and distributions" from the Enjebi Community Trust Fund, "shall not be subject to any form of Federal, State, or local taxation." The point of order was conceded and sustained. [100–1, p. H 5539–40]

September 30, 1988

H.R. 4637, Conference Agreement to accompany the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1989

A point of order was raised against the motion to concur in the Senate amendment No. 176 which provided that S. 2848 (Sanctions Against Iraqi Chemical Weapons Use Act), be added to the bill. The point of order was conceded and sustained. [100–2, p. H 9236]

October 4, 1989

H.R. 3299, Omnibus Budget Reconciliation Act of 1989

A point of order was raised against section 7002 which imposed a fee of $20 per passenger on vessels engaged in U.S. cruise trade or which offer off-shore gambling. The proceeds of this fee were to be deposited in both the Harbor Maintenance Trust Fund and the Treasury's general fund. The point of order was conceded and sustained. [101–1, p. H 6620]

October 4, 1989

H.R. 3299, Omnibus Budget Reconciliation Act of 1989

A point of order was raised against section 7002 which imposed an annual fee of $1 per acre on the holder of Outer Continental Shelf leases. This fee has been designated to offset the costs of ocean related environmental research, assessment, and protection programs. The point of order was sustained with the Chair stating that "a provision raising revenue to finance general government functions improperly characterized as a tax within the jurisdiction of Clause 5(b) of Rule XXI. [101–1, p. H 6610]

October 4, 1989

H.R. 3299, Omnibus Budget Reconciliation Act of 1989

A point of order was raised against section 3131(b) which exempted multi-employer pension plans from the full funding limits of the Internal Revenue Code, section 412(c)(7). This provision directly amended the Internal Revenue Code to allow the deductibility of contributions to a multi-employer pension plan in excess of the full funding limit. The point of order was conceded and sustained. [101–1, p. H 6622]

October 4, 1989

H.R. 3299, Omnibus Budget Reconciliation Act of 1989

A point of order was raised against section 3156 which imposed a "Termination Fee." Under the provision of the bill, an employer who terminated a pension plan in a standard termination was required to pay a $200-per-participant fee to the Pension Benefit Guaranty Corporation (PBGC), the Federal insurance agency established to insure defined benefit pension plans against insolvency. The point of order was conceded and sustained. [101–1, p. H 6621]

October 5, 1989

H.R. 3299, Omnibus Budget Reconciliation Act of 1989

A point of order was raised against section 3201 which imposed fees on the filing of certain forms required to be filed annually in connection with maintaining pension and benefit plans. The point of order was sustained with the Chair ruling that the revenue raised funded "general government activity." [101-1, p. H 6662]

July 13, 1990

H.R. 5241, Treasury, Postal Service and General Government Appropriations Act of 1991

A point of order was raised against section 524 which prohibited the Internal Revenue Service from enforcing rules governing the antidiscrimination rules of the exclusion for employer provided health-care plans (section 89 of the Internal Revenue Code). The point of order was conceded and sustained. [101-2, p. H 4692]

July 13, 1990

H.R. 5241, Treasury, Postal Service and General Government Appropriations Act of 1991

A point of order was raised against section 528 which prohibited that "no funds appropriated" would be used to impose or assess any tax under section 4181 of the Internal Revenue Code relating to the excise tax on the manufacture of firearms. The point of order was conceded and sustained. [101-2, p. H 4692]

October 23, 1990

H.R. 5021, Department of Commerce, Justice and State, the Judiciary and related Agencies Appropriations Act, 1991

A point of order was raised against amendment 139 which increased the rate of fees paid to the Securities and Exchange Commission at the time of filing a registration statement. The Chair ruled that since the amendment provided that the increased level of fees would be deposited in the Treasury, the fee involved was in reality a tax and the revenues were to be used to defray general governmental costs. The point of order was conceded and sustained. [101-2, p. H 11412]

D. The Subcommittee on Select Revenue Measures

The Subcommittee on Select Revenue Measures was established in 1978 (originally called the Subcommittee on Miscellaneous Revenue Measures). While most revenue measures are not referred to any specific subcommittee for review, the jurisdiction of this subcommittee under Rule 8(4) of the Rules of the Committee on Ways and Means comprises "those revenue measures which, from time to time, shall be referred to it specifically by the Chairman of the full Committee." Legislative proposals which were referred to the Subcommittee on Select Revenue Measures during the 101st Congress include the taxation of life insurance companies, corporate taxation reform, and numerous miscellaneous legislative proposals. In previous Congresses, the subcommittee developed major initiatives in such diverse areas as the tax treatment of life insurance (98th Congress); passthrough entities (99th Congress); and tax credits for low-income housing and rehabilitation (101st Congress).

E. The Subcommittee on Oversight

The Subcommittee on Oversight is the nonlegislative, investigative arm of the Committee on Ways and Means.

The Subcommittee on Oversight was one of the original six permanent subcommittees established by the Committee on Ways and Means at the end of the 93d Congress. The subcommittee was established in response to an amendment to the Legislative Reorganization Act of 1946 which required oversight activities by the standing committees of Congress.

Rule 8(3) of the Rules of the Committee on Ways and Means states that the jurisdiction of the Subcommittee on Oversight

> * * * shall be limited to existing law. Said oversight jurisdiction shall not be exclusive but shall be concurrent with that of the other subcommittees. With respect to matters involving the Internal Revenue Code and other revenue issues, said concurrent jurisdiction shall be shared with the full Committee. Before undertaking any investigation or hearing, the chairman of the Subcommittee on Oversight shall confer with the Chairman of the full Committee and the chairman of any other subcommittee having jurisdiction.

The original language of this rule has remained basically unchanged, with a clarification that the jurisdiction of the subcommittee includes all matters within the scope of the committee.

The Subcommittee on Oversight is responsible for reviewing and overseeing the effectiveness, adequacy and application of current laws and programs within the full committee's jurisdiction. The subcommittee also has primary responsibility for determining whether these laws are being interpreted properly and administered in a fair and efficient manner by the Federal agencies. The subcommittee also handles matters within the full committee's jurisdiction that require intensive staff investigation.

Hearings and oversight activities are conducted on a wide range of subjects as part of the subcommittee's responsibility to evaluate the impact of present-law rules and programs within the committee's jurisdiction. Subcommittee hearing reports and activities result in enactment of legislative changes by the full committee, administrative changes by the appropriate Federal agency, or provide an official record of testimony and information for use by the full committee and the Congress generally.

F. Joint Committee on Taxation

The Joint Committee on Taxation was created under the Revenue Act of 1926 (sec. 8001 of the Internal Revenue Code). The committee consists of 10 members, the 5 ranking members of the House Committee on Ways and Means and the 5 ranking members of the Senate Committee on Finance. In each case, three members represent the majority party and two members represent the minority party. The chairmanship of the Joint Committee alternates between the House and the Senate with the chairman of the Ways and Means Committee serving in this capacity during the first year of a Congress, and the chairman of the Committee on Finance serving the next year.

The Joint Committee on Taxation is empowered (through Code sec. 8021) to: (1) obtain and inspect income tax returns; (2) hold hearings, subpoena witnesses, require the production of books, papers, and documents, administer oaths, and take testimony; (3) procure such printing and binding as is deemed advisable; and (4) make necessary expenditures.

The Internal Revenue Code (sec. 8022) specifically provides that the functions of the Joint Committee are to:

> (1) investigate the operations and effects of the Federal system of internal revenue taxes;
>
> (2) investigate the administration of such taxes by the Internal Revenue Service or any executive department, establishment, or agency charged with their administration;
>
> (3) make such other investigations of such taxes as the Committee may deem necessary;
>
> (4) investigate measures and methods for simplification of internal revenue taxes, particularly the income tax; and
>
> (5) report, from time to time, to the Committee on Finance and the Committee on Ways and Means and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

The Joint Committee also has the statutory function of reviewing all proposed tax refunds of $1,000,000 and over (Code sec. 6405). In addition, the Joint Committee has statutory authority to conduct post-audit reviews of large deficiency cases.

In practice, the chief legislative function of the staff of the Joint Committee has been to serve as a technical staff for the Committee on Ways and Means and for the Committee on Finance, working in this capacity with the professional staffs of those committees. The staff aids the two tax committees in explaining provisions, in writing committee reports, and in the drafting of bills.

The Joint Committee on Taxation staff also prepares revenue estimates for the use of the tax committees and the Congress (sec. 273 of the Balanced Budget and Emergency Deficit Control Act of 1985). This responsibility includes the annual preparation of overall revenue estimates as well as revenue estimates on specific measures in which Members of Congress are interested.

The Joint Committee on Taxation, since its organization in 1926, has had eight chiefs of staff: Mr. Lovell H. Parker (1926–1938), Mr. Colin F. Stam (1938–1964), Dr. Laurence N. Woodworth (1964–1977), Mr. Bernard M. Shapiro (1977–1981), Mr. Mark L. McConaghy (1981–1983), Mr. David H. Brockway (1983–1987), Mr. Ronald A. Pearlman (1988–1990), and Mr. Harry (Hank) L. Gutman (1991–present).

Section 3. Role of the Executive Branch

A. The Department of the Treasury

GENERAL

The Department of the Treasury is charged with the responsibility of overseeing the financial interests of the United States. In this role, the Department advises the President on economic, tax, debt management, and fiscal policies; serves as financial agent for the Government; participates in law enforcement; and the production of coins and currency.

TAX POLICY

The development of tax policy for the executive branch is the responsibility of the Assistant Secretary for Tax Policy. The role of the Secretary is described in the United States Government manual as including: assisting in the development and review of executive tax proposals; analyzing other proposed tax legislation; projecting economic trends; studying the effects of alternative tax measures; preparation of official estimates of Government receipts for the President's budget messages; and participating in tax treaty negotiations. The Assistant Secretary for Tax Policy and members of his staff play a key role throughout all phases of the development of tax policy. The Assistant Secretary, or members of his staff, typically testifies before the tax-writing committees during any hearing on major proposed tax legislation; his staff participates in technical drafting of tax legislation, and provides technical assistance on revenue matters to Members of Congress and their staffs.

The following is a table of Assistant Secretaries for Tax Policy since 1961.

ASSISTANT SECRETARIES OF THE TREASURY FOR TAX POLICY, 1961 TO PRESENT

Name	Years served
Stanley S. Surrey	1961 to 1969
Edwin S. Cohen	1969 to 1972
Frederic W. Hickman	1972 to 1975
Charles M. Walker	1975 to 1977
Laurence N. Woodworth	1977 to 1977
Donald C. Lubick	1977 to 1981
John E. Chapoton	1981 to 1984

ASSISTANT SECRETARIES OF THE TREASURY FOR TAX POLICY, 1961 TO PRESENT—Continued

Name	Years served
Ronald A. Pearlman	1984 to 1985
J. Roger Mentz	1985 to 1987
O. Donaldson Chapoton	1987 to 1989
Kenneth W. Gideon	1989 to present

TAX ADMINISTRATION—STRUCTURE OF THE INTERNAL REVENUE SERVICE

The Internal Revenue Service (IRS) is responsible for the administration of most Federal tax laws. The IRS is structured into three organizational levels; national headquarters, regional offices, and district offices.

The national headquarters, as its name implies, establishes overall administrative policies. Regulations and other administrative guidance to the tax laws (such as revenue rulings, revenue procedures, private letter rulings, and technical advice memoranda) are developed and issued at this level.

There are seven regional offices:

Central which covers Indiana, Kentucky, Michigan, Ohio, and West Virginia and is located in Cincinnati;

Mid-Atlantic which covers Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and Virginia and is located in Philadelphia;

Midwest which covers Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, and Wisconsin and is located in Chicago;

North-Atlantic which covers Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont and is located in New York City;

Southeast which covers Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee and is located in Atlanta;

Southwest which covers Arizona, Colorado, Kansas, New Mexico, Oklahoma, Texas, Utah, and Wyoming and is located in Dallas; and

Western which covers Alaska, California, Hawaii, Idaho, Nevada, Oregon, and Washington and is located in San Francisco.

These offices oversee and coordinate the operations of the district offices.

The regional offices also oversee the service center(s) located in their region. There are 10 such centers which act primarily to process tax returns, certify refunds, and cooperate with the district offices in the examination of tax returns and the collection process.

The district office is the level having the most contact with the general public. It is at the district office level where most taxpayer assistance is available. The district offices are responsible for the examination of returns, audits, collection of delinquent taxes, and criminal and civil tax investigations. There are 62 district offices, with at least 1 in each State.

ROLE OF CHIEF COUNSEL

The Chief Counsel of the IRS represents the Commissioner in cases filed with the U.S. Tax Court, advises the Department of Justice of the basis for the IRS position in other tax litigation, and provides legal advice to IRS personnel. Counsel prepares revenue rulings, procedures, and regulations to guide the IRS and the public on interpretations of the Internal Revenue Code. The Chief Counsel of the IRS is also an Assistant General Counsel of the Treasury Department, and as such reports to the General Counsel. In the last 10 years, the office of Chief Counsel has been filled by N. Jerold Cohen (1979–1981); Kenneth W. Gideon (1981–1984); Fred T. Goldberg, Jr., (1984–1986); William F. Nelson (1986–1990); and Abraham N. M. Shashy (present).

ROLE OF THE COMMISSIONER OF INTERNAL REVENUE

The Commissioner serves as chief executive officer of the Internal Revenue Service. The Commissioner is responsible for establishing tax administration policy and developing strategic issues and objectives for strategic management of the IRS. As such, the Commissioner is responsible for overall planning, and directing, coordinating and controlling the policies and programs of the IRS. He directly supervises the Deputy Commissioner and Chief Inspector. The Commissioner is the principal spokesperson for the IRS with other executive branch agencies, the Congress, other tax authorities, and the public.

COMMISSIONERS OF THE INTERNAL REVENUE SERVICE—1862 TO PRESENT

Name	Home State	Dates of service	
		Start	End
George S. Boutwell	Massachusetts	July 17, 1862	March 4, 1863
Joseph J. Lewis	Pennsylvania	March 18, 1863	June 30, 1865
William Orton	New York	July 1, 1865	Oct. 31, 1865
Edward A. Rollins	New Hampshire	Nov. 1, 1865	March 10, 1869
Columbus Delano	Ohio	March 11, 1869	Oct. 31, 1870
Alfred Pleasonton	New York	Jan. 3, 1871	Aug. 8, 1871
John W. Douglas	Pennsylvania	Aug. 9, 1871	May 14, 1875
Daniel D. Pratt	Indiana	May 15, 1875	July 31, 1876
Green B. Raum	Illinois	Aug. 2, 1876	April 30, 1883
Walter Evans	Kentucky	May 21, 1883	March 19, 1885
Joseph S. Miller	West Virginia	March 20, 1885	March 20, 1889
John W. Mason	West Virginia	March 21, 1889	April 18, 1893
Joseph S. Miller	West Virginia	April 19, 1893	Nov. 26, 1896
W. St. John Forman	Illinois	Nov. 27, 1896	Dec. 31, 1897
Nathan B. Scott	West Virginia	Jan. 1, 1898	Feb. 28, 1899
George W. Wilson	Ohio	March 1, 1899	Nov. 27, 1900
John W. Yerkes	Kentucky	Dec. 20, 1900	April 30, 1907
John G. Capers	South Carolina	June 5, 1907	Aug. 31, 1909
Royal E. Cabell	Virginia	Sept. 1, 1909	April 27, 1913
William H. Osborn	North Carolina	April 28, 1913	Sept. 25, 1917
Daniel C. Roper	South Carolina	Sept. 26, 1917	March 31, 1920
William M. Williams	Alabama	April 1, 1920	April 11, 1921
David H. Blair	North Carolina	May 27, 1921	May 31, 1929
Robert H. Lucas	Kentucky	June 1, 1929	Aug. 15, 1930
David Burnet	Ohio	Aug. 20, 1930	May 15, 1933
Guy T. Helvering	Kansas	June 6, 1933	Oct. 8, 1943
Robert E. Hannegan	Missouri	Oct. 9, 1943	Jan. 22, 1944
Joseph D. Nunan, Jr	New York	March 1, 1944	June 30, 1947
George J. Schoeneman	Rhode Island	July 1, 1947	July 31, 1951
John B. Dunlap	Texas	Aug. 1, 1951	Nov. 18, 1952
T. Coleman Andrews	Virginia	Feb. 4, 1953	Oct. 31, 1955
Russell C. Harrington	Rhode Island	Dec. 5, 1955	Sept. 30, 1958
Dana Latham	California	Nov. 5, 1958	Jan. 20, 1961
Mortimer M. Caplin	Virginia	Feb. 7, 1961	July 10, 1964
Sheldon S. Cohen	Maryland	Jan. 25, 1965	Jan. 20, 1969
Randolph W. Thrower	Georgia	April 1, 1969	June 22, 1971
Johnnie M. Walters	South Carolina	Aug. 6, 1971	April 30, 1973
Donald C. Alexander	Ohio	May 25, 1973	Feb. 26, 1977
Jerome Kurtz	Pennsylvania	May 5, 1977	Oct. 31, 1980
Roscoe L. Egger, Jr	Indiana	March 14, 1981	April 30, 1986
Lawrence B. Gibbs	Texas	Aug. 4, 1986	March 4, 1989
Fred T. Goldberg, Jr	Missouri	July 5, 1989	Present

REGULATION AND RULEMAKING PROCESS IN THE TREASURY DEPARTMENT

Congress enacts the Federal tax laws of the United States. While these laws can be quite detailed, others may only present a broad outline of statutory rules. This outline must be filled in by rules, regulations, and interpretations so that the tax laws may be applied and administered uniformly, effectively, and fairly to all the myriad of specific transactions which are subject to such laws. The Secretary of the Treasury has general statutory authority under section 7805 of the Internal Revenue Code to issue rules and regulations which may be needed for the administration of the laws. Also, many sections of the Internal Revenue Code require the Secretary to issue regulations to carry out the provisions of the particular section.

The Secretary carries out this responsibility, usually through the Internal Revenue Service, by issuing various types of interpretations which range from general guidance (such as regulations, revenue rulings, revenue procedures, tax returns and instructions, and IRS publications) to guidance for specific individuals or situations (such as private letter rulings, technical advice memoranda, and determination letters).

Regulations

Regulations are official interpretations and explanations of Internal Revenue Code provisions. They must be signed by the Secretary and the Commissioner of Internal Revenue, and published in the Federal Register. A regulation is typically first published as a proposed regulation. The proposed regulation is published in the Federal Register. This is followed by a comment period in which hearings are commonly held and comments and suggestions solicited. Amendments may be made in response to the comments. Ultimately, a final regulation is published in the Federal Register. Final regulations are codified in title 26 of the Code of Federal Regulations. It is this codified version of the Treasury decisions that is commonly referred to as the IRS regulations.

Treasury regulations are subject to review by the courts. Regulations are not the law, but they are given the force and effect of law if they are found to be consistent with the reasonable interpretation of the underlying statutes. The Internal Revenue Service is bound by these decisions and so may not challenge them in court.

Instead of first issuing a proposed regulation, in the case of some tax provisions, Treasury may instead choose to issue a temporary regulation. Temporary regulations are published in the Federal Register without a hearing or comment period. Unlike proposed regulations, temporary regulations are binding on the Government and taxpayers immediately upon publication. Temporary regulations are used when it is deemed necessary to provide taxpayers immediate certainty with respect to recently enacted tax legislation. While immediately effective, temporary regulations also serve as proposed regulations, since a comment period follows their publication. Temporary regulations are binding for 3 years after publication, or, if sooner, the issuance of final regulations.

Revenue Rulings

Revenue rulings (Rev. Ruls.) are interpretations of the Internal Revenue Code prepared by the national office of the Internal Revenue Service. They are published weekly in the Internal Revenue Bulletin and compiled yearly in the Cumulative Bulletin.

These rulings are presented in the context of a hypothetical fact situation (or situations), to demonstrate how applicable Code provisions, regulations and other revenue rulings will be applied. Such rulings are of value as precedent, although the Code and/or regulations are controlling if there is a conflict.

Revenue Procedures

Revenue Procedures (Rev. Procs.) are internal practices and procedures of the Internal Revenue Service. Like revenue rulings, they are published weekly in the Internal Revenue Bulletin and compiled yearly in the Cumulative Bulletin. While the procedures are for internal use, some of them do give guidance on subjects of interest to taxpayers, such as how the IRS will apply certain accounting rules, or how different types of depreciation should be calculated.

Private Letter Rulings

Private letter rulings are given in response to a request by a taxpayer for the IRS's view of the tax consequences of a contemplated transaction. Letter rulings are similar to revenue rulings in that the national office of the IRS issues a ruling that applies the Code, regulations, and revenue rulings to a specific fact situation. Letter rulings are distinguished from revenue rulings however, in the limited scope of their application. A private ruling is requested by an individual taxpayer, who supplies the fact situation. A private ruling is binding on the IRS only with respect to the facts supplied by the taxpayer as they affect that particular taxpayer; revenue rulings, by contrast, generally provide reliance for all similarly situated taxpayers. Private rulings are not officially published, although they may be obtained (with taxpayer specific information expurgated) through the Freedom of Information Act and are published by some commercial publishers.

Technical Advice Memoranda

A technical advice memorandum is, in effect, an after-the-fact private letter ruling. If, during the course of a tax proceeding, a question arises that cannot be answered on the local level, a ruling may be requested from the national office of the IRS. The advice sought concerns a transaction which has already occurred, in distinction to the future transaction contemplated by the private letter ruling. Technical advice memoranda are not officially published, although they may also be obtained (with taxpayer specific information expurgated) through the Freedom of Information Act and are published by some commercial publishers.

Determination Letters

Determination letters are essentially private letter rulings issued at the district office level. These determination letters are usually to confirm the tax favored (or "qualified") status of pension plans and tax-exempt organizations. Determination letters are not officially published, although they may be obtained through the Freedom of Information Act.

Technical Memoranda

Technical memoranda (TM's) are legal memoranda by the Chief Counsel's office which are written to accompany proposed regulations. The memoranda explain the background of and the need for the proposal and then summarize the proposal. Technical memoranda are not officially published, although they may be obtained through the Freedom of Information Act and are published by some commercial publishers.

General Counsel's Memoranda

General Counsel's memoranda (GCM's) are legal memoranda prepared by the Chief Counsel's Office. They are written in response to requests from IRS employees for advice in the preparation of revenue rulings, private letter rulings, and technical advice memoranda. General Counsel's memoranda are not officially published, although they may be obtained (with taxpayer specific information expurgated) through the Freedom of Information Act and those of general interest are published by some commercial publishers.

B. The Department of Justice

The Department of Justice, Tax Division, represents the United States in all civil and criminal litigation arising under the tax laws other than cases before the United States Tax Court. Examples of civil cases in which the Justice Department represents the United States as defendant include cases in which taxpayers claim refunds in Federal district court; suits brought by individuals to foreclose mortgages or obtain quiet title to property on which there is a tax lien; and challenges to the constitutionality or legality of IRS regulations or rulings. Civil cases in which the Justice Department represents the Government as plaintiff includes cases in which the Government seeks to collect unpaid taxes; actions to enforce IRS collection procedures such as jeopardy assessments for tax liens; cases brought under the Freedom of Information Act; suits against employees of the IRS for damages resulting from alleged breach of their official duties; and suits to collect judgments in tax cases.

The Justice Department is also responsible for the prosecution of all criminal offenses committed in violation of the tax laws. Criminal offenses under the Internal Revenue Code include: any attempt to evade or defeat a tax; willful failure to pay over a tax; willful failure to file a return or supply information; and various kinds of fraud. For a more complete list of crimes under the Internal Revenue Code see Code sections 7201 through 7216.

Section 4. Role of the Judiciary

GENERAL

Following examination of a taxpayer's return, the Internal Revenue Service (IRS) may determine that a taxpayer's tax liability for a year is higher than that actually paid. If the taxpayer disagrees with the Government's assessment of his or her taxes, after exhausting the administrative appeals process within the IRS, the taxpayer may appeal to Federal court.

Which court the taxpayer chooses depends in part on whether or not the taxpayer first pays the disputed tax. If the taxpayer has already paid the disputed tax in full and filed a claim for refund which was disallowed (or on which the IRS did not take action within six months), the taxpayer may take the case to the U.S. district court or the U.S. Claims Court. If the taxpayer chooses not to pay the tax, the claim may be taken to the Tax Court.

There are various other jurisdictional differences that might dictate which court would properly decide a particular tax controversy. For instance, the Tax Court, unlike the Claims Court and U.S. district courts, generally does not have jurisdiction over certain types of controversies, such as criminal cases, summons enforcement, and Freedom of Information Act cases.

Of these three forums, only the U.S. district court offers trial by jury. Because the district court is a court of general jurisdiction, however, the judge may have little preexisting tax expertise. For this reason, most complex civil tax cases are ordinarily brought in either the Claims Court or the Tax Court.

Various additional factors might influence a taxpayer's choice between the Claims Court and the Tax Court. Procedural and evidentiary rules vary between these courts. A trial in the Claims Court generally is conducted in a more formal manner (generally with more discovery permitted) than in the Tax Court. Each court follows its own precedents; for this reason, the taxpayer may view one court as a more favorable forum than another. Appeals from the Claims Court lie with the Court of Appeals for the Federal Circuit, whereas appeals from the Tax Court lie with the respective Court of Appeals. The Justice Department represents the Internal Revenue Service in the Claims Court, whereas the Internal Revenue Service uses its own district counsel in the Tax Court.

TAX COURT

The Tax Court was created in 1924 as the Board of Tax Appeals, and in 1942 was renamed the Tax Court of the United States. Until 1969, the court was an independent executive agency.

In 1969, the court was renamed the United States Tax Court and reconstituted as an Article I court; that is, an independent agency in the legislative branch of the government. The Tax Court shares its Article I status with the Court of Military Appeals. As an agency in the legislative branch, certain of the court's attributes differ from those of courts established under Article III of the Constitution. Its judges are each appointed for a term of 15 years (rather than the lifetime tenure constitutionally required for a judge in an Article III court). The Tax Court is the only court with the power to review determination of tax liability before actual payment of the tax.

The Tax Court is comprised of 19 judges appointed by the President, with the advice and consent of the Senate. Judges may be removed by the President for inefficiency, neglect of duty, or malfeasance. The jurisdiction of the Tax Court is confined to tax cases, and consists of the ability to hear taxpayers' petitions for deficiencies determined by the Internal Revenue Service; and to review the qualified status of charitable organizations, the qualification of retirement plans, and the tax-exempt status of municipal bonds.

There are a number of strict procedural requirements governing a taxpayer's ability to take a dispute to Tax Court. A taxpayer who wishes to dispute the IRS's determination of his or her tax liability may pursue the case through the administrative channels established by the IRS. If these channels do not resolve the dispute to the satisfaction of the taxpayer and the Government, the IRS sends the taxpayer a notice of deficiency (Internal Revenue Code section 6212). This notice is often called a "90-day" letter because the taxpayer has 90 days following mailing of this letter to file a claim in Tax Court (or 150 days, in the case of notices addressed to persons outside the United States). The Tax Court has no jurisdiction to review deficiencies of taxpayers who do not meet the 90-day (or 150-day) requirement (Internal Revenue Code section 6213).

The Internal Revenue Service is not empowered to enforce collection of the deficiency until after the expiration of the 90-day (or 150-day) period. If the taxpayer files a timely petition with the Tax Court, the IRS may not enforce collection until the court renders a final decision (Internal Revenue Code section 6213).

APPELLATE REVIEW

Either the Government or the taxpayer may appeal the Tax Court's decision to the Federal court of appeals for the circuit in which the taxpayer resides or has his or her principal place of business. Different courts of appeal may reach different decisions on similar cases. In the event of conflict among the courts of appeal, taxpayers are bound by the decision of the circuit court in which they live or maintain their principal place of business. Conflicts among courts of appeal can be settled only by the Supreme Court.

A taxpayer's appeal from a decision by a district court is heard by the court of appeals for the circuit in which the taxpayer resides or has his or her principal place of business. That is, whether the taxpayer begins a case in Tax Court or district court, the taxpayer's appeal will be heard by the same court of appeals. A taxpayer who has paid the tax and sues for a refund in the United States Court of Claims, however, may appeal only to the Court of Appeals for the Federal Circuit.

PART II. SOURCES OF INFORMATION ABOUT FEDERAL TAXES

Section 1. Legislative Support Staffs

A. Congressional Research Service

The Congressional Research Service (CRS), as the name implies, is the research arm of the legislative branch. The purpose of CRS is to provide Congress with analytical research and reference assistance, without political bias, in support of its legislative, oversight, and representative functions.

CRS is organized into seven research divisions (American Law, Economics, Education and Public Welfare, Environment and Natural Resources Policy, Foreign Affairs and National Defense, Government, and Science Policy Research) and two library information divisions (Congressional Reference and Library Services). Generally, tax inquiries of an analytical nature are referred to either the American Law Division (for inquiries of a legal nature such as requests for legal analysis, legislative history, or statutory interpretation) or the Economics Division (for inquiries analyzing economic effect or implications, or statistical analysis). Inquiries in some specific areas which may have a tax component, such as pensions or Social Security, may be referred to analysts in one of the other divisions.

CRS attempts to tailor its responses to fit the nature of the inquiry, the congressional need to be met, and any time constraints placed on the request. A response may take the form of a prepared report or issue brief on topics of general interest, or a memorandum or personal briefing on questions of specific interest to a Congressional office. CRS also supplies copies of documents (laws, regulations, court opinions) and articles or other secondary materials. While CRS cannot give individual tax advice to, or for, constituents, it does provide general information to assist in answering this type of inquiry.

Information on CRS publications may be found in the *Guide to CRS Products,* which is published quarterly in January, April, July, and October, and is routinely sent to all Members and committees. A monthly supplement to this publication is also sent to all Members and committees, under the title *Update to the Guide to CRS Products.* Tax materials are generally indexed under the heading of *Taxation* or *Local Finance.*

Requests from Congressional offices may be initiated by personal visit, phone call, letter, or electronic mail system. Letters should be addressed to:

Joseph E. Ross, Director
Congressional Research Service
The Library of Congress
Washington, D.C. 20540

Telephone numbers of general interest include (area code 202):

General inquiries (public)	707-5522
General inquiries (Congressional)	707-5700
Requests for specific CRS products (a product number is needed)	707-7132
Ready reference questions (CRS Hotline)	707-7100

B. General Accounting Office

The U.S. General Accounting Office (GAO) assists the Congress in carrying out its legislative and oversight responsibilities by evaluating or auditing Federal agencies. In the tax area, GAO does two types of reviews—those that evaluate IRS's administration of the tax system and those that analyze tax policy

GAO reviews start through three main avenues. First, GAO initiates some reviews based on an annual planning process that considers factors such as congressional interest, programs' significance and opportunities to have an impact. Second, legislation sometimes mandates a specific review. Third, congressional committees, subcommittees or members ask GAO to undertake reviews. Committee requests always result in some type of review while those from individual members are honored to the extent possible.

To complete these reviews, from time to time GAO may need access to information from tax returns. Tax-writing congressional committees grant this access based on established procedures to protect confidentiality. One such procedure is to select transactions through random sampling. It is GAO's policy not to investigate and report on the tax status of specific taxpayers identified for GAO by others. To further protect confidentiality, GAO staff must adhere to various procedures and requirements, and GAO findings must be reported in the aggregate.

GAO reviews usually aim to evaluate the economy, efficiency, and effectiveness of the Federal tax system. When a review indicates an IRS activity or a tax law can be improved, recommendations are offered on ways to make the improvement. Findings on whether the aims are achieved, along with related recommendations, are usually captured in GAO reports. Reports range from those that lay out detailed analyses and recommendations in evaluating one or more issues to those that summarize facts in answering specific questions. Recommendations focus on changes in the future to avoid affecting ongoing tax cases. Further, some work culminates in briefings to congressional staff or members, or in testimony to congressional committees.

Recent reports

Appendix I (following page) provides a listing of some recent GAO tax reports.

Congressional offices should call GAO's Office of Congressional Relations at (202) 275-5388 to order copies of GAO reports.

How to contact GAO

To discuss work that GAO could do or to obtain briefings on completed work, call any of the key officials listed in Appendix II (following page).

APPENDIX I

CHRONOLOGICAL LISTING OF GAO PRODUCTS ON TAX MATTERS ISSUED IN FISCAL YEAR 1990

Testimony on Allocation of Taxes Within the Life Insurance Industry, (GAO/T-GGD-90-3) 10/19/89.
Report on Allocation of Taxes Within the Life Insurance Industry (GAO/GGD-90-19) 10/19/89
Private Pensions: Impact of Vesting and Minimum Benefit and Contribution Rules in Top-Heavy Plans (GAO/HRD-90-4BR) 10/23/89
Social Security: Alternative Wage-Reporting Processes (GAO/HRD-90-35) 11/08/89
Puerto Rico: Background Information on Applicable Federal Legislation, Its Governmental Structure, and Its Finances (GAO/T-HRD-90-7) 11/15/89
Pension Plan Terminations: Recapturing Tax Benefits Contained in Asset Reversions (GAO/HRD-90-51BR) 11/22/89
Department of Justice's Responses to Requests for Court Tax Decisions (GAO/GGD-90-29FS) 12/13/89
Treasury's Efforts to Improve Its Payroll and Personnel Systems (GAO/IMTEC-90-4) 12/15/89
Tax-Exempt Bond Issuance Costs (GAO/GGD-90-9BR) 12/18/89
Need for More Management Attention to IRS' College Recruitment Program (GAO/GGD-90-32) 12/22/89
Private Pensions: Spousal Consent Forms Hard to Read and Lack Important Information (GAO/HRD-90-20) 12/27/89
Monitoring the Accuracy and Administration of IRS' 1989 Test Call Survey (GAO/GGD-90-36) 01/04/90
Monitoring the Accuracy and Administration of IRS' 1989 Test Call Survey (GAO/GGD-90-37) 01/04/90
IRS Needs to Improve Distribution of Tax Materials to the Public (GAO/GGD-90-34) 01/10/90
IRS Automation: Procurement Practices Need Strengthening (GAO/IMTEC-90-24) 01/12/90
Government Financial Vulnerability: 14 Areas Needing Special Review (GAO/OCG-90-1) 01/23/90
Tax Treatment of Life Insurance and Annuity Accrued Interest (GAO/GGD-90-31) 01/29/90
Perspectives on Potential Agricultural and Budgetary Impacts From an Increased Use of Ethanol Fuels (GAO/T-RCED-90-23) 02/01/90
Meeting the Government's Technology Challenge: Results of a GAO Symposium (GAO/IMTEC-90-23) 02/90
The Question of Rolling Back the Payroll Tax: Unmasking the Deficit Illusion (GAO/T-HRD-90-10) 02/05/90
Tax System Modernization: IRS' Challenge for the 21st Century (GAO/IMTEC-90-13) 02/08/90
IRS' Accounts Receivable Inventory (GAO/T-GGD-90-19) 02/20/90
Use of Housing Subsidies (GAO/T-RCED-90-34) 02/27/90
Puerto Rico: Background Information on Applicable Federal Legislation, Its Governmental Structure, and Its Finances (GAO/HRD-90-70BR) 03/07/90
IRS Senior Executives' Views on the Impact of the 1987 Reorganization (GAO/GGD-90-45) 03/08/90
Information on Timber Harvesting, Planting, Federal Assistance Programs, and Tax Provisions (GAO/T-RCED-90-45) 03/08/90
Social Security: Taxing Nonqualified Deferred Compensation (GAO/HRD-90-82) 03/15/90
1989 Annual Report on GAO's Tax-Related Work (GAO/GGD-90-46) 03/16/90
State Tax Officials Have Concerns About a Federal Consumption Tax (GAO/GGD-90-50) 03/21/90
Progress in Meeting the Challenge of Modernizing IRS' Tax Processing System (GAO/T-IMTEC-90-5) 03/22/90
IRS' Budget Request for Fiscal Year 1991 and Status of the 1990 Tax Return Filing Season (GAO/T-GGD-90-26) 03/22/90
Tax System Modernization: IRS' Efforts to Improve Taxpayer Correspondence (GAO/IMTEC-90-26) 03/22/90
Uncertain Impact of Repealing the Deferral for Reinvested Shipping Income (GAO/GGD-90-35) 03/26/90
Profiles of Major Components of the Tax Gap (GAO/GGD-90-53BR) 04/04/90

Social Security: Taxing Nonqualified Deferred Compensation (GAO/T-HRD-90-21) 04/05/90

Potential Audit Revenues Lost While Training New Revenue Agents (GAO/GGD-90-77) 04/06/90

Taxation of Pension Income for Retired New Jersey Police and Firefighters (GAO/GGD-90-73BR) 04/13/90

Testimony on Timber Harvesting, Planting, Federal Assistance Programs, and Tax Provisions (GAO/RCED-90-107BR) 04/13/90

Erroneous Penalties for Failure to File Returns or Pay Taxes Can Be Reduced (GAO/GGD-90-80) 04/13/90

Credit Management: Deteriorating Credit Picture Emphasizes Importance of OMB's Nine-Point Program (GAO/AFMD-90-12) 04/16/90

IRS Can Use Tax Gap Data to Improve Its Programs for Reducing Noncompliance (GAO/T-GGD-90-32) 04/19/90

Low-Income Housing Tax Credit Utilization and Syndication (GAO/T-RCED-90-73) 04/27/90

1987 Company Effective Tax Rates Higher Than in Prior Years (GAO/GGD-90-69) 05/10/90

Computer Security: Governmentwide Planning Process Had Limited Impact (GAO/IMTEC-90-48) 05/10/90

Status of IRS' Test of a Business Information Returns Program (GAO/GGD-90-38) 05/29/90

Nonprofit Hospitals: Better Standards Needed for Tax Exemption (GAO/HRD-90-84) 05/30/90

Information Returns: Correcting Taxpayer Identification is Possible Without Disclosing Tax Data (GAO/GGD-90-90) 06/05/90

IRS Can Improve Its Process for Recognizing Tax-Exempt Organizations (GAO/GGD-90-55) 06/08/90

Federal Government's Oversight of Pension and Welfare Funds (GAO/T-HRD-90-37) 06/13/90

Treasury's Office of Inspector General Properly Established (GAO/AFMD-90-70) 06/14/90

Rental Housing: Inefficiencies From Combining Moderate Rehabilitation and Tax Credit Subsidies (GAO/RCED-90-168) 06/19/90

IRS Needs More Reliable Information on Enforcement Revenues (GAO/GGD-90-85) 06/20/90

Testimony on the Need for Better Tax Exemption Standards for Nonprofit Hospitals (GAO/HRD-90-45) 06/28/90

Data Needed on Whether to Regulate Filers of Information Returns for Others (GAO/GGD-90-95) 07/03/90

Management Mistakes Caused Delays in Automated Underreporter System (GAO/IMTEC-90-51) 07/10/90

Pension Plan Terminations: Effectiveness of Excise Tax in Recovering Tax Benefits in Asset Reversions (GAO/HRD-90-126) 07/13/90

Alcohol Fuels: Impacts From Increased Use of Ethanol Blended Fuels (GAO/RCED-90-156) 07/16/90

Additional Petroleum Production Tax Incentives Are of Questionable Merit (GAO/GGD-90-75) 07/23/90

Pension Issues: Audits of Employee Benefit Plans Need to Be Strengthened (GAO/T-AFMD-90-25) 07/24/90

Trends in Growth and Age of IRS' Accounts Receivable (GAO/GGD-90-111FS) 07/30/90

Effects of the Fiscal Year 1990 Sequestration on the Internal Revenue Service (GAO/GGD-90-101FS) 07/30/90

Federal Tax Deposit Requirements Should Be Simplified (GAO/GGD-90-102) 07/31/90

IRS' Accounts Receivable Inventory (GAO/GGD-90-60) 08/01/90

Observations on the Low-Income Housing Tax Credit Program (GAO/RCED-90-203) 08/14/90

IRS Preparer Penalty Data Inaccurate and Misleading (GAO/GGD-90-92) 08/15/90

Private Pensions: Impact of New Vesting Rules Similar for Women and Men (GAO/HRD-90-101) 08/21/90

IRS Needs to Assess Options to Make Faster Deposits of Large Tax Payments (GAO/GGD-90-120) 08/31/90

IRS Data Can Help SSA Credit More Wages (GAO/HRD-90-112) 08/31/90

IRS' Improved Estimates of Tax Examination Yield Need to Be Refined (GAO/GGD-90-119) 09/05/90

Recruitment and Retention: Inadequate Federal Pay Cited as Primary Problem by Agency Officials (GAO/GGD-90-117) 09/11/90

The Budget Deficit: Outlook, Implications, and Choices (GAO/OCG-90-5) 09/12/90

Pension Benefits: Processing of Applications By the Pension Benefit Guaranty Corporation (GAO/HRD-90-127) 09/25/90

Home Ownership: Limiting Mortgage Assistance Provided to Owners With High-Income Growth (GAO/RCED-90-117) 09/26/90

Alcohol Excise Taxes: Simplifying Rates Can Enhance Economic and Administrative Efficiency (GAO/GGD-90-123) 09/27/90

Information Returns: Administration of Selected Filing Penalty Cases at Austin Service Center (GAO/GGD-90-99) 09/28/90

APPENDIX II

GAO TAX OFFICIALS

Jennie S. Stathis
Director, Tax Policy and Administration Issues
GAO Main Building (441 G Street, NW)
Room 3858
(202) 275-6407

GAO Tax Policy and Administration Issues Audit Site

1440 New York Avenue NW
Suite 400
Washington, D.C. 20005
(202) 272-7904

Paul Posner
Associate Director, Tax Policy and Administration Issues

Assistant Directors

David Attianese—Budget Issues, IRS Returns Processing
Cornelia Blanchette—IRS Collections, Tax Accounting
Joseph Oyola—International Issues
John Lovelady—Taxpayer Service, Criminal Work
Allan Stapleton—IRS Examinations, Document Matching
Thomas McCool—Economic Analyses, Consumption Taxes
Michael Brostek—Penalties, Excise Taxes, Tax-exempt Issues
Martin Morris—Tax Counsel

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Assistant General Counsel
(202) 275-6410

C. Congressional Budget Office

The Congressional Budget Office (CBO), established in 1974 as an analytical support agency of the Congress, provides key information on the U.S. economy, the Federal budget, and Federal programs.

Each year, CBO provides Congress with semiannual forecasts of the economy. It reviews and prepares an analysis of the President's budgetary proposals. It provides Congress with 5-year projections of the total Federal budget, against which changes in taxing and spending policies can be measured. CBO also scores congressional spending and revenue actions against budget resolution targets and submits to Congress advisory reports estimating whether the anticipated Federal budget deficit and discretionary spending amounts have been adhered to and whether the pay-as-you-go rules have been violated pursuant to the 1990 amendments to the Balanced Budget and Emergency Deficit Control Act of 1987.

The agency is required by law to estimate the 5-year cost of legislation reported by all authorizing committees of the Congress. In addition, CBO annually publishes a broad range of studies of programmatic issues affecting the Federal budget and is called upon regularly by all congressional committees to provide expert testimony on fiscal and budgetary matters.

CBO is a nonpartisan agency. It does not make policy recommendations, but assesses available policy alternatives and options and reports the estimated consequences of adopting such courses of action. The Budget Act establishes the following priority of committees for CBO services: first, the House and Senate Budget Committees; second, the House and Senate Appropriations Committees, the House Ways and Means Committee, and the Senate Finance Committee; finally, all other congressional committees. Committee requests take the form of a letter from the chairman or ranking minority member of a full committee of jurisdiction, or the chairman of a subcommittee of jurisdiction or a Budget Committee task force. CBO also responds to requests from the leadership of either party in both Houses of Congress.

CBO's published reports are distributed to all Members of Congress. To request a publications list or specific publication, telephone CBO at (202) 226–2809, or write to:

Office of Intergovernmental Relations
Congressional Budget Office
House Office Building Annex #2
Second and D Streets SW
Washington, D.C. 20515

Section 2. Reports and Studies

Mandated Reports and Studies

Listed below (by subject, citation of request, and due date) are mandated studies either outstanding or received in the 102d Congress for which the Department of the Treasury, Office of Tax Policy, has primary responsibility.

1. *Americans Working Abroad (Section 912).* Section 208—Foreign Earned Income Act of 1978 (P.L. 95-615) as amended by Section 114. The Economic Recovery Tax Act of 1981 (P.L. 97-34).
   Due end of 1993 (every 5 years).
2. *Source Rule on Sales of Personal Property.* Section 1211(d), Title XII, the Tax Reform Act of 1986 (P.L. 99-514).
   Due January 1, 1992.
3. *Reform of Subchapter C.* Section 634, Title VI, the Tax Reform Act of 1986 (P.L. 99-514).
   Due January 1, 1992.
4. *Study of Certain Fraternal Beneficiary Societies.* Section 1012(c)(2), Title X, the Tax Reform Act of 1986 (P.L. 99-514).
   Due July 1, 1992.
5. *Worthlessness of Bad Debts.* The Tax Reform Act of 1986 (P.L. 99-514), Conference Report (99-841), p. II-316.
   Due January 1, 1988.
6. *Pension Plans Full-Funding Limitation.* Section 9301(c)(3), Title IX, the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).
   Due April 15, 1991.
7. *Limiting Policyholder Dividend Deduction for Mutual Companies.* Section 1025, Title X, the Tax Reform Act of 1986 (P.L. 99-514).
   Due January 1, 1992.
8. *Publicly Traded Limited Partnerships (final report).* Section 10215, the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).
   Due January 1, 1989—Final Report. Partial report received March 30, 1990.
9. *Definition of United States Resident.* Section 6138, the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).
   Due May 1, 1989.
10. *Minimum Participation Rules.* Section 6056, the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).
    Due February 15, 1991. Received March 15, 1991.

11. *Treatment of Certain Technical Personnel.* Section 6072, the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).
    Due February 15, 1991. Received March 15, 1991.
12. *Taxation of Social Security Benefits (1987).* Section 121, the Social Security Amendments of 1983 (P.L. 98-21), p. 97, Stat. 84.
    Due Annually. Received March 1, 1991.
13. *International Boycott Provision.* Section 1067, the Tax Reform Act of 1976 (P.L. 94-455), as amended by Section 411, the Deficit Reduction Act of 1984 (P.L. 98-369).
    Due 1993—4-year cycle.
14. *Treatment of Certain Family Service Providers.* Section 6305(e), the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).
    Due January 1, 1992.
15. *Deferred Compensation under Section 457.* Section 6064(d)(4), the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).
    Due January 1, 1992.
16. *Private Foundation Grant-Making Expenses.* The Deficit Reduction Act of 1984 (P.L. 98-369), Conference Report (98-861), p. 1087.
    Due January 1, 1990—Extended from January 1, 1988 by letter from Chairman Rostenkowski, September 10, 1985. Received January 1990.
17. *Spin-off of Defined Benefit Plan Assets to Bridge Banks.* Section 6067(b), the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).
    Due January 1, 1992.
18. *DISC/FSC/FSC Services.* Section 506, Revenue Act of 1971 (P.L. 92-178), as amended by Section 804, the Deficit Reduction Act of 1984 (P.L. 98-369), as amended by Section 6252(b)(2), the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647), Also Conference Report (98-861), p. 976.
    Due Final DISC: April 4, 1987, First FSC: December 31, 1990. Quadrennial. FSC Services: January 18, 1985.
19. *Possessions Corporation (Seventh Report).* Section 441, the Deficit Reduction Act of 1984 (P.L. 98-369) as it amends Ways and Means and Senate Finance Reports on the Tax Reform Act of 1976 (P.L. 94-455), as amended by Section 6252(b)(1) of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).
    Next report Due December 31, 1992. Quadrennial.
20. *Study of Depreciation Treatment of Certain Vehicles.* Section 7612(f), the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239).
    Due April 15, 1991.

21. *Study of Return Requirement Where Cash Received in Trade or Business.* Section 11318(d), Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508).
    Due March 31, 1991.

22. *Study of Section 482.* Section 11316, Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508).
    Due March 1, 1991.

23. *Study of Special Valuation Rules with Respect to Estate Tax Freezes.* Section 11602(d), Omnibus Budget Reconciliation Bill of 1990 (P.L. 101–508).
    Due December 31, 1992.

Major Treasury Studies

The following major Treasury studies provide useful information about the tax system and ways in which it might be reformed:

Tax Reform for Fairness, Simplicity, and Economic Growth—The Treasury Department Report to the President, Office of the Secretary, Department of the Treasury, 3 volumes (November 1984). Volume 1 of the study discusses the need for tax reform in 1984, surveys various options, and proposes a modified flat tax. It discusses comprehensively, in the context of needed reforms, the taxation of individuals and families, the taxation of capital and business income, and various industry-specific subsidies. It also discusses the relative advantages and disadvantages of a consumption tax and a value-added tax. Volume 2 of the study provides additional information concerning the scope and operative effect of its proposals. It describes then-current law for numerous specific issues, gives reasons for change, details its proposals, and analyzes the probable effect of each proposal. Volume 3 is devoted to the value-added tax. It describes and evaluates the value-added tax from an economic and administrative perspective.

The President's 1978 Tax Program—Detailed Descriptions and Supporting Analyses of the Proposals, Department of the Treasury (January 30, 1978). The study presents a set of proposals to stimulate the economy through reduced rates and to make the tax system more equitable and simple. Because many of the proposals in this study have already been adopted or overtaken by subsequent developments in the law, they may be largely of historical interest, although the more general policy goals discussed are still current.

Blueprints for Basic Tax Reform, Department of the Treasury (January 17, 1977) (in 1982 there was published commercially a revision of this study by Mr. David H. Bradford, who as Deputy Assistant Secretary for Tax Policy (Tax Analysis) directed the work on the original 1977 study). This study presents two specific model tax systems: (1) a reformed comprehensive income tax that would, among other things, eliminate the separate corporate income tax; and (2) a cash-flow tax based on consumption. The study analyzes the relative merits of the two models and contains quantitative analyses.

RECENT JOINT COMMITTEE ON TAXATION PAMPHLETS ON TAX ISSUES

Following is a selective list of some recent pamphlets prepared by the staff of the Joint Committee on Taxation. These pamphlets provide useful background information on various issues that have come before the Committee on Ways and Means for hearings, as well as descriptions and analyses of particular proposals that may have been under consideration. If the pamphlets remain in print, copies may be obtained by calling (202)-225-2647. Certain additional 1991 pamphlets are reprinted as part of this document (e.g., JCS-2-91: *Description of Tax Provisions Expiring in 1991 and 1992* is reprinted as Part VIII; JCS-3-91: *Schedule of Present Excise Taxes (as of January 1, 1991)* is reprinted in section 5 of Part III).

JCS-90 DOCUMENTS

(GPO-PRINTED PAMPHLETS)

JCS-1-90 *Background and Issues Relating to the Taxation of Foreign Investment in the United States* Scheduled for Hearings Before the House Committee on Ways and Means on January 24-25 and 30-31, 1990 (January 23, 1990).

JCS-4-90 *Explanation of Miscellaneous Tax Proposals* Scheduled for Hearings Before the Subcommittee on Select Revenue Measures of the House Committee on Ways and Means on February 21-22, 1990 (February 14, 1990).

JCS-6-90 *Present Law and Background Relating to Federal Environmental Tax Policy* Schedule for Hearings by the Committee on Ways and Means on March 6-7 and 14, 1990 (March 1, 1990).

JCS-7-90 *Estimates of Federal Tax Expenditures for Fiscal Years 1991-1995* Prepared for the Committee on Ways and Means and the Committee on Finance (March 9, 1990).

JCS-8-90 *Tax Treatment of Short-Term Trading* Scheduled for a Hearing Before the Senate Committee on Finance on March 21, 1990 (March 19, 1990).

JCS-9-90 *Present-Law Rules Relating to Qualified Pension Plans* Scheduled for a Hearing Before the Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service of the Senate Committee on Finance on March 23, 1990 (March 22, 1990).

JCS-10-90 *Proposals and Issues Relating to Taxation of Capital Gains and Losses* Scheduled for a Hearing Before the Senate Committee on Finance on March 28, 1990 (March 23, 1990).

JCS-11-90 *Present Law, Proposals, and Issues Relating to Individual Retirement Arrangements and Other Savings Incentives* Scheduled for a Hearing Before the Senate Committee on Finance on March 27, 1990 (March 26, 1990).

JCS-12-90 *Explanation of Methodology Used to Estimate Proposals Affecting the Taxation of Income from Capital Gains* (March 27, 1990).

JCS-13-90 *Federal Transfer Tax Consequences of Estate Freezes* Scheduled for a Hearing Before the Committee on Ways and Means on April 24, 1990 (April 20, 1990).

JCS-22-90 *Present Law and Certain Issues Relating to Transfer Pricing (Code Section 482)* Scheduled for Hearings Before the Subcommittee on Oversight of the House Committee on Ways and Means on July 10 and 12, 1990 (June 28, 1990).

JCS-23-90 *Present Law and Proposals Relating to Increasing Domestic Energy Production and Reserves* Scheduled for a Hearing Before the Subcommittee on Energy and Agricultural Taxation of the Committee on Finance on July 27, 1990 (July 26, 1990).

JCS-24-90 *Simplification of Present-Law Tax Rules Relating to Qualified Pension Plans (S. 2901, The Employee Benefits Simplification Act)* Scheduled for a Hearing Before the Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service of the Senate Committee on Finance on August 3, 1990 (August 3, 1990).

JCX-90 Documents

(JOINT COMMITTEE PHOTOCOPY DOCUMENTS)

JCX-1-90 *Background and Issues on Certain Tax and Trade Alcohol Fuel Initiatives* Scheduled for a Hearing Before the House Committee on Ways and Means on February 1, 1990 (January 30, 1990).

JCX-8-90 *Present Law and Issues Relating to Social Security Tax Treatment of Nonqualified Compensation* Scheduled for a Hearing Before the Subcommittee on Social Security of the House Committee on Ways and Means on April 5, 1990 (April 2, 1990).

JCX-16-90 *Overview of the Enforcement and Administration of the Employee Retirement Income Security Act of 1974* Scheduled for a Hearing Before the Subcommittee on Oversight of the House Committee on Ways and Means on June 12–14, 1990 (June 6, 1990).

JCX-22-90 *Present-Law Tax Rules and Proposed Committee Amendment Under S. 712, Puerto Rico Status Referendum Act*—Markup Consideration by Senate Committee on Finance on August 1, 1990 (August 1, 1990).

JCX-23-90 *Revenue Estimates of Proposed Committee Amendment Under S.712 Puerto Rico Status Referendum Act*—Markup Consideration by Senate Committee on Finance on August 1, 1990 (August 1, 1990).

JCX-24-90 *Simplification of Tax Rules Relating to Employee Benefit Programs Maintained by Churches (S. 2902, The Church Retirement Benefits Simplification Act)* Scheduled for a Hearing Before the Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service of the Senate Committee on Finance on August 3, 1990 (August 3, 1990).

JCX-25-90 *Description of H.R. 5454 (The Technical Corrections Act of 1990)* (August 3, 1990).

JCX-40-90 *Description of H.R. 5826 (Small Business Tax Incentive Act of 1990)* Scheduled for Markup Consideration by the

House Committee on Ways and Means on October 16, 1990 (October 15, 1990).

JCX-43-90 *Budget Reconciliation—Revenue Provisions Conference Comparison of House Bill and Senate Amendment* (October 19, 1990).

JCX-44-90 *Comparison of Revenue Provisions of H.R. 5835 (Revenue Reconciliation Act of 1990) as Passed by the House and the Senate* (October 19, 1990).

JCX-45-90 *Budget Reconciliation (H.R. 5835)—Revenue Provisions as Reported by the Conferees* (October 26, 1990).

JCX-46-90 *Summary of Distributional Effects, By Income Category—Budget Reconciliation (H.R. 5835)—Revenue Provisions as Reported by the Conferees* (October 26, 1990).

JCX-47-90 *Index to Revenue and Pension Provisions (Titles XI and XII) of the Conference Report for the Omnibus Budget Reconciliation Act of 1990 (H.R. 5835)* (November 15, 1990).

IRS Information Pamphlets

Following are several useful IRS tax publications available free of charge from IRS Form Distribution Centers:

Publication 1	*Your Rights as a Taxpayer* (see Part VII)
Publication 2	*The ABC's of Income Tax*
Publication 17	*Your Federal Income Tax*
Publication 225	*Farmer's Tax Guide*
Publication 448	*Federal Estate and Gift Taxes*
Publication 541	*Tax Information on Partnerships*
Publication 542	*Tax Information on Corporations*
Publication 554	*Tax Information for Older Americans*

Many other general guides and specialized publications are also available free from the IRS. Many of these publications are listed in Publication 17, which also contains information on how to order the publications.

PART III. THE FEDERAL TAX SYSTEM

Section 1. The Individual Income Tax

A. HISTORICAL INTRODUCTION

An income tax was first enacted in the Revenue Act of 1862 (Ch. 119, 12 Stat. 432) to finance the Civil War. The tax was repealed a decade later in 1872. The individual income tax made a second, brief appearance as part of a 1894 revenue act enacted during the second administration of President Cleveland. The tax was abolished as a result of the Supreme Court decision in *Pollock* v. *Farmer's Loan and Trust Company,* 158 U.S. 601 (1895), that the imposition of the individual income tax was a violation of clause 4 of Article I, section 9 of the United States Constitution, which prohibits "direct" taxation without apportionment among the States. As a result of *Pollock,* it was clear that in the absence of a constitutional amendment, Congress lacked the power to lay an individual income tax.

Nearly 20 years following the Supreme Court's decision in *Pollock,* the 16th amendment was ratified on February 25, 1913. Under the 16th amendment, Congress has the power to collect taxes "on incomes from whatever source derived," without apportionment among the States. Several months later, Congress enacted the individual income tax as part of the Revenue Act of 1913. In its initial form, the income tax was designed to affect only a relatively small number of households, and by the standards of today, in a modest way. For married couples, the tax did not apply to taxable incomes less than $3,000. The top marginal rate was 7 percent, and applied to taxable income over $500,000 (table 1).

Since that time, the individual income tax has grown to be the most significant single source of Federal revenue. In 1989, the individual income tax raised $445.7 billion, or 45 percent of all Federal receipts (table 2). Since 1980, the individual income tax has raised steadily increasing amounts of revenue, but its overall share of total revenue raised has declined slightly over the same period. This is because of the slowly but steadily growing share of payroll taxes in overall Federal receipts (table 3 of this section and tables 1 and 3 of Part IV, "Historical Tables").

B. OVERVIEW

Two basic economic principles underlie the structure of the individual income tax: efficiency and equity. These two principles may come into conflict with one another. Some measures designed to increase equity may result in less economic efficiency; similarly, measures which achieve greater economic efficiency may be perceived as inequitable.

The principle of efficiency implies that the best tax is one which interferes as little as possible with individuals' choices regarding their economic activity. A completely efficient tax would tax all economic income, from whatever source derived, in exactly the same manner and, consequently, distort economic behavior as little as possible. Of course, the individual income tax system departs in large measure from this model. Even a casual glance at its structure shows that income expended on certain activities, or income earned in certain ways, is taxed at a lower rate than other income. This is because Congress has decided to use the tax system to encourage or discourage certain forms of behavior or because it may view conforming the tax system to the economic model as administratively difficult or unfair. The effect of these decisions is explored in this section.

The principles of equity embody commonly held notions of what makes a tax system fair. Under the principle of horizontal equity, individuals in like situations are taxed alike. Under the principle of vertical equity, individuals with more income pay more taxes than individuals with less. Traditionally, the principle of vertical equity has embraced the notion of progressivity, under which individuals with higher income pay a higher percentage of their income in taxes than individuals with less income. Some look to the higher-income person's "greater ability to pay" as justification for progressivity. Progressivity is often supported on the theory that as an individual's income increases, each additional dollar is less important to that individual's overall well being. It is only fair, under this view, to require that higher income individuals pay a higher percentage of income in taxes than low-income individuals for whom a greater percentage of income is required for the necessities of life. This theory is sometimes denoted as the principle of declining marginal utility of income. Critics of the theory, however, question the empirical support of its assumptions. They argue that, taken to its extreme, the theory should lead one to equalize all incomes. According to this view, a tax strictly proportional to income is sufficient to meet the goals of vertical equity.

In today's income tax system, the goal of vertical equity is accomplished in three ways. First, as a taxpayer's income grows, it is subject to higher marginal rates. Second, income below certain thresholds is exempt from taxation altogether through the provision of personal exemptions and the standard deduction. Third, the earned income tax credit is available to reduce the tax liability of low-income taxpayers. For very low-income families, the earned income tax credit is refundable, and serves as a reverse, or "negative," income tax and results in transfer payments from the Government to the household.

C. STRUCTURE OF THE INDIVIDUAL INCOME TAX

In General

The individual income tax is levied on "taxable income." Taxable income equals the taxpayer's total income, less certain exclusions, exemptions, and deductions. After applying the appropriate tax rates to his or her taxable income, the taxpayer may reduce tax liability by applying tax credits against the otherwise owed tax liability. For very low-income households, the earned income tax credit may reduce the household's tax liability below zero and result in refunds to these housholds.

To the extent that items may be excluded or deducted from total income because they represent expenditures on congressionally preferred activities, the revenue losses to the Government are generally referred to as "tax expenditures." That is, the revenue loss is treated under this concept as the equivalent of a Government outlay for the preferred activity. (Part V discusses the theory of tax expenditures, dissenting views, and revenue estimates of major tax expenditure items.) The rest of this chapter explores each of these features in turn.

Appendix 1 (after table 9), prepared by the Congressional Research Service,[1] provides an explanation for a number of commonly used Federal individual income tax terms. The terms covered are explained in the order that they occur in the process of determining one's income tax.

Adjusted Gross Income

Under the Internal Revenue Code, a taxpayer's gross income is "all income, from whatever source derived." That is, unless specifically exempt or excluded by statute, all sources of income, including compensation for services, investment income (such as interest, dividends and capital gains), alimony, prizes, and awards, are included in the taxpayer's gross income.

The most important statutory exceptions to this all-inclusive definition of gross income are exclusions for certain employer-provided fringe benefits, including health care, dependent care assistance and educational assistance and the deferral of tax on accrued pension benefits. The tax expenditure attributable to the deferral of tax on pension contributions and the income on accrued pension benefits totaled $59.8 billion in 1990; the tax expenditure attributable to the exclusion of employer-provided health care, $32 billion. (See table 1 in Part V, "Tax Expenditures" for further data.) In addition, certain items of compensation are excluded from gross income, such as employer-provided meals, lodging, employee discounts, free travel, and so forth. These items are excluded because keeping track of their value to individual employees might impose recordkeeping problems disproportionate to the value of the benefit.

Having computed gross income by totaling all income (except for income excluded by statute), the taxpayer computes adjusted gross income by deducting certain items as permitted by statute. These deductions are colloquially known as "above the line" deductions to distinguish them from itemized deductions (discussed below). The most important deductions allowable from gross income are deductions for trade and business expenses, capital losses, contributions to Individual Retirement Accounts (IRAs), contributions to the pension plans of self-employed individuals, and alimony payments.

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[1] Source: "Federal Individual Income Tax Terms: An Explanation" by Louis Alan Talley, Congressional Research Service, the Library of Congress, April 20, 1990.

Taxable Income

Taxable income is computed by deducting from adjusted gross income the sum of two items: personal exemptions and deductions.

a. *Personal exemptions.*—In 1991, each personal exemption is worth a deduction of $2,150. The taxpayer may deduct one personal exemption for the taxpayer, the taxpayer's spouse, and each of the taxpayer's dependents. For example, a married couple filing jointly with four dependent children is entitled to six personal exemptions, worth a total deduction of $8,600.

Beginning in 1991, the personal exemption is phased out, or gradually eliminated, for very high-income taxpayers. For 1991, the value of a taxpayer's personal exemptions are reduced by 2 percentage points for every $2,500 or portion thereof by which the taxpayer's adjusted gross income exceeds $150,000 in the case of a married couple filing jointly ($100,000 for an unmarried individual). In 1991, this means that each personal exemption is reduced by $43 (2 percent of $2,150) for every $2,500 of income over the applicable threshold. All personal exemptions are phased-out over a $122,500 range; thus, the greater the number of personal exemptions, the more tax benefit lost as a result of each income increment of $2,500. For example, for a married couple filing jointly with four children, each $2,500 income increment over $150,000 means a reduction in personal exemptions of $258 (6 × $43).

For a married couple, exemptions are totally phased out at adjusted gross income of $275,000 ($225,000 for an unmarried individual). The beginning point and end point of the phaseout range are indexed for inflation.

The personal exemption is designed to personalize the individual income tax by making adjustments for a larger family's diminished ability to pay taxes. In addition, the personal exemption is an important element in ensuring the progressivity of the income tax system. Even without the phaseout of the exemption, the exemption excludes a higher percentage of income for lower income households than for higher income households. For example, as noted above, a family of six may deduct up to $8,600 through personal exemptions. In the case of a family with income of $25,000, six personal exemptions shelter 34 percent of family income from taxation; with income of $100,000, six personal exemptions shelter only 8.6 percent of family income from taxation.

Before enactment of the Tax Reform Act of 1986, personal exemptions were generally available to all taxpayers regardless of income. The Tax Reform Act of 1986 phased out personal exemptions for high-income taxpayers. The method of phasing out personal exemptions was modified by the Omnibus Budget Reconciliation Act of 1990 (OBRA of 1990), effective for years beginning in 1991 (described above).

The personal exemption is indexed to inflation. The exemption amount equaled $2,000 in 1989 and $2,050 in 1990.

b. *Standard deduction.*—In addition to allowable personal exemptions, the taxpayer may also deduct an amount equal to the "standard deduction." The standard deduction varies according to filing status. In 1991, the standard deduction is worth $5,700 for a married couple filing jointly; $5,000 for a head of household; and $3,400 for a single individual. Like the personal exemption, the standard deduction is indexed for inflation and so is expected to grow over time.

An individual who is blind or elderly is entitled to an additional standard deduction amount. For a married taxpayer who is either blind or elderly, the additional standard deduction is $650 in 1991. If both spouses are elderly (or blind), the couple's additional standard deduction is $1,300. For an unmarried taxpayer who is blind or elderly, the additional standard deduction is $850.

Table 4 shows personal exemptions and standard deductions for 1990 and 1991.

c. *Itemized deductions.*—Instead of taking the standard deduction, taxpayers have the option of itemizing their deductions. That is, they can elect to deduct individually expenses for State and local income and property taxes; mortgage interest; charitable gifts; certain investment interest; medical expenses (to the extent they exceed 7½ percent of adjusted gross income); miscellaneous itemized deductions related to earning income, such as safety deposit rental fees, employee business expenses, and investment advisory expenses (to the extent they exceed 2 percent of adjusted gross income); and casualty losses (to the extent they exceed 10 percent of adjusted gross income).

Under prior law, a taxpayer's itemized deductions were generally not limited in any way for high-income taxpayers. OBRA of 1990 provides a partial cutback of itemized deductions for high-income taxpayers, effective for taxable years beginning on or after January 1, 1991. Under this provision, a taxpayer's itemized deductions are reduced by an amount equal to 3 percent of the excess of the taxpayer's adjusted gross income over $100,000. The $100,000 income threshold is the same for married and single taxpayers. Regardless of the size of a taxpayer's income, this provision will never cutback more than 80 percent of the taxpayer's itemized deductions.

The following hypothetical example illustrates how this provision works. In 1991, Taxpayer A has adjusted gross income of $150,000 and itemized deductions of $20,000. The excess of Taxpayer A's income over $100,000 equals $50,000. Three percent of $50,000 equals $1,500. Taxpayer A's itemized deductions are reduced by $1,500 to $18,500.

In shorthand tax jargon, this provision is a "floor" under itemized deductions for high-income taxpayers (so called because only amounts over the floor are deductible). The 3 percent floor operates in addition to other floors set under specific itemized deductions (e.g., the floors on medical expenses, casualty losses, and miscellaneous itemized deductions).

Marginal Rates

In general.—After calculating taxable income, the taxpayer determines actual tax liability. Historically, the income tax has been structured so that as a taxpayer's income increased, the tax rate applicable to the taxpayer's additional income increased. The rate applicable to the last dollar of income earned by the taxpayer is termed the taxpayer's "marginal" rate. The taxpayer's *average* rate is generally lower than his or her marginal rate because, while the taxpayer's last dollar of income is taxed at the highest marginal rate, other income is taxed at the lower marginal rates applicable to lesser amounts of income. The range of income subject to each increasingly higher marginal rate is termed an income "bracket." Before the Tax Reform Act of 1986, there were 11 marginal rates, and thus 11 income brackets. The Tax Reform Act of 1986 created two income brackets: one taxable at 15 percent, one taxable at 28 percent. OBRA of 1990 created a third marginal rate bracket. For years beginning in 1991, three marginal rates apply to individual income: 15, 28, and 31 percent. Table 6 shows marginal tax rates for 1991.

The top marginal rate has varied widely since the inception of the individual income tax. When first enacted in 1913, the top marginal rate was 7 percent, applicable only to taxable incomes in excess of $500,000. Since then, the top marginal rate has climbed as high as 92 percent. Between 1982 and 1986, the top marginal rate was 50 percent. The Tax Reform Act of 1986 brought down the statutory top marginal rate to 28 percent, beginning in 1988. Under OBRA of 1990, the top marginal rate is 31 percent, beginning in 1991.

Rate "Bubbles"

For high-income taxpayers, certain tax benefits are phased out or cut back in some way. An example already discussed in this chapter is the personal exemption, which is gradually eliminated for high-income taxpayers. Itemized deductions are another example since (beginning in 1991) they are subject to a floor equal to 3 percent of the excess of adjusted gross income over $100,000. From the taxpayer's perspective, income-based curtailment of a tax benefit operates very much like an additional marginal rate. That is, for every dollar of additional income, the taxpayer loses a part of a deduction, and so pays a little extra tax on top of the nominal marginal rate. These phaseouts and cutbacks of deductions act like rate "bubbles" they represent an add-on to the marginal rate shown in the rate table.

33-percent bubble under Tax Reform Act (repealed by OBRA of 1990).—The Tax Reform Act of 1986 created a rate bubble which was repealed by OBRA of 1990. Under the Tax Reform Act of 1986, two tax benefits were phased out for high-income taxpayers: the personal exemption, and the benefit of the 15-percent rate applied to lower income. In 1990, these phaseouts began at taxable income of $78,400 for a married couple filing jointly, and $47,050 for an unmarried individual. The effect of these phaseouts was to create an additional 5-percent rate on top of the statutory marginal rate of 28 percent. Thus, taxpayers with income in the phaseout range experienced a marginal rate of 33 percent.[1]

For administrative convenience, the Internal Revenue Service did not require that individuals calculate the phaseouts themselves; rather, the forms showed their marginal rate equivalent. As a result, every individual who read the tax forms carefully was aware that under Tax Reform there was, in addition to the top statutory marginal rate of 28 percent, a 33-percent rate for taxpayers in certain income ranges.

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[1] The phaseouts created a rate bubble in the following fashion. For every dollar of taxable income over $162,000, the taxpayer lost $0.1786 of allowable personal exemptions. At a marginal tax rate of 28 percent, the loss of a deduction of $0.1786 means an increase in tax of $0.05 ($0.1786 × 0.28=$0.05). Thus, every dollar of income over $162,000 meant a tax increase of $0.05, or a marginal rate add-on of 5 percent.

While the taxpayers marginal rate in the phaseout range was 33 percent, it can be seen that the taxpayers *average* rate in this range was less than 28 percent. This is because, before the phaseouts were complete, at least some of the taxpayer's income was taxed at 15 percent; and some (the portion sheltered by the personal exemptions) was subject to zero tax. As the taxpayer's income grew, and the phaseouts continued, the taxpayer's average rate grew closer and closer to 28 percent, as income formerly taxed at 15 percent, or not taxed, became taxed at a 28-percent rate.

For income above the phaseout range, the taxpayer's marginal rate was 28 percent. As a result, for very high-income taxpayers with income above the phaseout range, the *marginal* tax rate was lower than that of more moderate-income taxpayers in the phaseout range. However, the *average* rate of such high-income taxpayers was 28 percent (because, after the phaseouts were complete, all taxable income was taxed at 28 percent). Thus, the average rate of very high-income taxpayers (those with incomes in excess of the bubble range) was not lower than the average tax rate of taxpayers with income within the bubble range.

Table 5 shows the marginal rate tables resulting from the phaseouts for 1990.

Rate Bubbles Under OBRA of 1990

OBRA of 1990 eliminated the phaseouts as they were structured under the Tax Reform Act of 1986. As a result, the 33-percent rate bubble is eliminated, beginning in 1991.

Under OBRA of 1990, the top statutory marginal rate is 31 percent. The 31-percent marginal rate begins at the income level where the 33-percent rate was scheduled to begin under prior law (that is, after adjustment of the 1990 rate tables for inflation). In 1991, all income above $82,150 for married couples filing joint returns, and $49,300 for unmarried individuals, is subject to the 31 percent marginal rate.

Having repealed the rate bubbles of prior law, OBRA of 1990 introduced two rate bubbles of its own. Unlike the rate bubbles under the Tax Reform Act of 1986, these bubbles will not be expressed anywhere on the tax forms. Therefore, many taxpayers will be unaware they exist.

Phaseout of personal exemptions.—OBRA of 1990 provides that the personal exemptions of high-income taxpayers are phased out. (The exemption amount in 1991 is $2,150 for the taxpayer, the taxpayer's spouse, and each dependent). The mechanics of this phaseout are described above.

Over the phaseout range, the phaseout of personal exemptions raises the taxpayer's marginal rate—that is, creates a new bubble—by approximately 0.5 percent for each personal exemption.[2] Examples of the combined effect of the bubble and the top 31-percent rate are as follows:

Taxpayer	Adjusted gross income range	Marginal rate (percent)
Single individual	$100,000 to $225,000	31.5
Married couple, no children	$150,000 to $275,000	32
Married couple, two children	$150,000 to $275,000	33
Married couple, four children	$150,000 to $275,000	34

In contrast with the bubble created by the Tax Reform Act of 1986, the marginal rate effect of the phaseout of the personal exemptions under the Omnibus Budget Reconciliation Act of 1990 will not be readily apparent. In calculating tax liability for 1991 (and years thereafter), high-income taxpayers will calculate the reduction in their personal exemptions, and then apply the 31-percent top rate. No separate rate table will exist to show the bubble effect of the phaseout.

Cutback in itemized deductions.—Beginning in 1991, itemized deductions are reduced by an amount equal to 3 percent of the excess of taxable income over $100,000. The effect of the disallowance of itemized deductions is to increase the marginal tax rate of affected taxpayers. The marginal rate increase is 0.93 percent for income in the 31-percent marginal rate bracket.[3]

For many taxpayers, the additional 0.93-percent rate is in addition to the new bubble created by the phaseout of the personal exemptions. For example, a married couple filing jointly, with two dependent children, if affected by both provisions will have a marginal rate of 33.93 percent in certain income ranges (31 percent, plus 2 percent from the phaseout of exemptions, plus 0.93 percent from the cutback of itemized deductions).

Like the bubble created by the phaseout of personal exemptions, the marginal rate increase caused by the cutback in itemized deductions will not be seen by the taxpayer as an explicit marginal rate increase. Rather, the taxpayer will calculate the actual reduction in his otherwise allowable itemized deductions, and then apply his statutory marginal rate—28 or 31 percent—to resulting taxable income. Nonetheless, visible or not, both the phaseout of personal exemptions, and the cutback in itemized deductions create a de facto marginal rate increase for affected taxpayers.[4]

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[2] Unlike the marginal rate bubble under the Tax Reform Act of 1986, the marginal rate effect of the personal exemption phaseout under OBRA of 1990 is not smooth. This is because the phaseout is accomplished over income increments of $2,500, rather than increments of one dollar. Within each interval of $2,500 in the phaseout range, an additional dollar of income does not result in any additional reduction in personal exemptions, and so has no marginal rate effect.

[3] The effect of the provision on marginal rates is calculated as follows. For every dollar of income over $100,000, the taxpayer loses a deduction of $0.03. At a marginal tax rate of 31 percent, the loss of a deduction of three cents means a tax increase of 0.93 cents ($0.03 \times 0.31 = .0093$), or a marginal rate add-on of 0.93 percent. A similar calculation applied to the 28-percent rate shows that for affected taxpayers at the 28-percent rate, the provision results in a marginal rate increase of 0.84 percent.

Earned Income Tax Credit

The earned income tax credit (EITC) was enacted in 1975. Its purpose is threefold: to provide an income supplement to low-income workers, to provide relief from the Social Security and other payroll taxes, and to provide work incentives.

The EITC is a refundable credit. That is, if the size of the credit exceeds the size of the taxpayer's income tax liability, the difference is paid to the taxpayer by the Government in cash. Accordingly, the EITC functions in part as an income transfer mechanism. Eligibility for the credit is restricted to households with earned income who have children.

The EITC is available on an advance basis. Under this system, the eligible individual's employer reduces the individual's income tax withholding or refunds a prorated credit amount to the individual.

OBRA of 1990 made significant changes to the EITC. Under OBRA of 1990: (1) the size of the EITC was expanded and adjusted for family size; (2) eligibility standards for the credit were simplified; (3) a supplemental credit for infants (children under the age of 1) was added; and (4) a supplemental credit for the health insurance expenses of children was added.

Prior law.—In 1990, the EITC equaled 14 percent of the first $6,810 of earned income. The credit was phased out at a rate of 10 percent of the amount of adjusted gross income (or, if greater, earned income) in excess of $10,730. The credit was not adjusted for family size. The $6,810 and $10,730 amounts were adjusted annually for inflation. The maximum credit amount in 1990 was $953.

Before 1991, the EITC was available to married individuals filing joint returns who were entitled to a dependency exemption for the child; surviving spouses (who, by definition, maintain a household for a dependent child); and unmarried heads of household who maintained a household for a child. These eligibility criteria resulted in certain low-income working families being ineligible for a credit. A dependency exemption is available for a child (the eligibility criterion for married couples filing jointly) only if the taxpayer provides more than one-half the child's total support. An individual is considered to maintain a household for a child (the eligibility criterion for heads of household) only if that individual furnishes more than one-half of total household expense. For these purposes, benefits under Aid to Families with Dependent Children (AFDC) and other Government transfer programs are not considered to be "support" or "household maintenance" provided by the household claiming the credit. Thus, if more than one-half of a household's income was from certain Government transfer programs, the EITC was generally unavailable to that household.

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[4] Other "bubbles" also are present in the tax system (e.g., the earned income tax credit phaseout, the passive activity loss phaseout rules, Social Security taxation rules, the child and dependent care credit phaseout, and the individual retirement account deduction income limitations).

Before 1991, there was no additional EITC for young children, or for health insurance expenses.

Modifications under OBRA of 1990.—OBRA of 1990 expanded the size of the credit and adjusted it for family size. The thresholds (which, as mentioned above, are indexed for inflation) remain the same as under prior law. Thus, in 1991, the credit is projected to attain its maximum level at earned income of $7,140; the credit phaseout is projected to commence at income of $11,250. The credit percentages and phaseout rates are now as follows:

	Credit percentage	Phaseout percentage
For 1991		
1 qualifying child	16.7	11.93
2 or more qualifying children	17.3	12.36
For 1992		
1 qualifying child	17.6	12.57
2 or more qualifying children	18.4	13.14
For 1993		
1 qualifying child	18.5	13.21
2 or more qualifying children	19.5	13.93
For 1994 and thereafter		
1 qualifying child	23	16.43
2 or more qualifying children	25	17.86

For 1991, the maximum credit is projected to be $1,192 for taxpayers with one qualifying child and $1,235 for taxpayers with two or more qualifying children.

The amount of credit that may be received on an advance basis is limited to the credit that the taxpayer could receive if the taxpayer had only one qualifying child.

OBRA also modified the eligibility criteria for EITC, effective for 1991. These modifications generally simplify the eligibility standards and expand the class of households to whom the EITC is available. Very generally, under the new criteria, a low-income individual may claim the EITC with respect to any non-adult child (or adult disabled child) who lives with that individual for more than one-half the year, provided nobody else may also claim the credit for that child.

More specifically, an individual (or married couple) is eligible for the EITC with respect to another person if that other person:

(1) is a son, daughter (or descendent of either), stepson or stepdaughter, or a foster child or adopted child of the taxpayer. (A foster child is defined as a person for whom the individual cares for as the individual's child; it is not necessary to have a placement through a foster care agency),

(2) is under the age of 19 (or a full time student and under the age of 24) at the close of the taxable year; or is permanently and totally disabled, and

(3) shares the same place of abode as the person claiming the credit for more than one-half the year (the entire year for foster children). As under prior law, the residence must be in the United States.

As under prior law, if the qualifying child is married at the close of the year, the individual may claim the EITC for that child only if the individual may also claim the dependency exemption of that child. Also as under prior law, married taxpayers may claim the EITC only if they file a joint return.

In addition to the above criteria, two "tiebreaker" rules apply:

(1) If more than one individual may claim the EITC (if any) with respect to any qualifying child, then only the individual with the highest adjusted gross income may claim the EITC with respect to the child. For example, assume a hypothetical household comprised of a grandmother, mother (age 20); and child (age 2). Both the grandmother and mother are eligible to claim the credit with respect to the child. However, in this case, only the individual with the higher adjusted gross income is eligible to claim the credit (assuming the other requirements are met).

(2) An individual who is himself or herself a qualifying child may not claim the EITC. If in the above example, the mother is age 17 (instead of age 20), then she herself is a qualifying child of the grandmother. In this case, only the grandmother could claim the EITC, with respect to her own child (mother, age 17) and her grandchild (child, age 2).

OBRA of 1990 also provides that, in order to claim the EITC, the individual must supply a taxpayer identification number (TIN) for each child for whom the credit is claimed who has attained the age of 1 as of the end of the year.

In addition, under OBRA of 1990, an individual claiming the EITC must attach a separate schedule to his or her tax return. This schedule must show the TIN (for children over the age of 1), name, and age of each qualifying child.

Supplemental newborn child credit.—OBRA of 1990 created an additional credit for children who have not attained the age of 1 as of the close of the year. The supplemental credit uses the same limits and phaseout ranges as the basic EITC. In 1991, the supplemental credit equals 5 percent of the first $7,140 of earned income; the phaseout percentage is 3.57 percent. The maximum supplemental young child credit is projected to be $357 in 1991. The basic credit percentage (5 percent) is not scheduled to change. However, because the credit base is indexed to inflation, the maximum supplemental credit is expected to grow.

An individual may not claim the dependent care credit for expenses related to any child for whom the individual claims the supplemental young child credit.

The supplemental credit is not available on an advance basis.

Health credit.—OBRA of 1990 also created a supplemental EITC for certain health insurance premium expenses. The credit has the same income limits and phaseout threshold as the EITC. In 1991, the credit equals 6 percent of the first $7,140 of earned income. The phaseout rate equals 4.285 percent. The size of the credit (6 percent) and the phaseout percentage are not scheduled to change. In 1991, the maximum health credit is projected to be $428.

The credit is available to offset premiums paid for health insurance coverage that includes one or more qualifying children (as defined for EITC eligibility). The size of the credit may in no case exceed the household's actual health insurance premium costs. The credit is refundable, but this credit is not available on an advance basis.

The amount of any expenses eligible for the medical expense deduction or the health insurance deduction for self-employed individuals is reduced dollar-for-dollar by the amount of the allowable credit under this provision.

The following table summarizes the changes made by OBRA to the projected size of the EITC:

EARNED INCOME TAX CREDIT PERCENTAGE AND PROJECTED MAXIMUM CREDIT AMOUNT, 1991–94

	1991	1992	1993	1994
Prior law:				
Credit rate (percent)	14	14	14	14
Maximum credit (dollars)	1,000	1,060	1,098	1,137
OBRA of 1990:				
One child				
Credit rate (percent)	16.7	17.6	18.5	23
Maximum credit (dollars)	1,192	1,332	1,450	1,868
Two or more children				
Credit rate (percent)	17.3	18.4	19.5	25
Maximum credit (dollars)	1,235	1,393	1,529	2,030
Supplemental newborn credit				
Credit rate (percent)	5	5	5	5
Maximum credit (dollars)	357	379	392	406
Supplemental health credit				
Credit rate (percent)	6	6	6	6
Maximum credit (dollars)	428	454	470	487

Tax Entry Points

The objective of providing a progressive income tax has long embodied the notion that taxpayers with incomes below certain threshold levels should not be subject to the income tax at all. With this goal in mind, tax policymakers have traditionally viewed these threshold levels, or "tax entry points," as one of the measures of the fairness of the income tax system.

The standard deduction and personal exemptions are two important structural elements necessary to ensure the level of the tax entry points. It is simple to see that, because of these two features alone, a moderate-income family of four, comprised of a married couple and two dependent children, in 1990 would pay no taxes on the first $13,650 of income. This is because income equal to the sum of $5,450 (the standard deduction) plus $8,200 (four personal exemptions) would not be taxed.

The earned income tax credit significantly raises the tax entry point above the point created by the standard deduction and personal exemptions alone. For example, consider the hypothetical family of four with two children, headed by a married couple. Without the earned income tax credit, their income tax threshold is $13,650 in 1990. But the earned income tax credit reduces the income tax liability even for families with incomes above this threshold, in certain cases, to zero. In fact, because of the availability of the earned income credit, the hypothetical family of four discussed in this example will have no income tax liability until its income reaches $16,295.

Table 8 shows tax entry points, with and without the earned income tax credit, for taxpayers of different filing status, for 1990 and 1991.

Indexing

In the absence of indexing, inflation would have significant consequences on all the structural features of the individual income tax. Specifically, as prices rose, the real value of the personal exemption, standard deduction, and credits expressed in dollars would decline. Also, since the threshold points between rate brackets are expressed in dollars, in the absence of indexing, taxpayer's incomes would become subject to tax at higher rates even though their real incomes did not rise. This result is known as "bracket creep."

The result of bracket creep is that taxes rise faster than real incomes. This is because the value of tax benefits (personal exemptions, the standard deduction, and credits) fall in real terms, while incomes become subject to taxes at higher marginal rates, even while not rising in real terms.

The Economic Recovery Tax Act of 1981, effective for taxable years beginning after 1984, indexed the most significant features of the income tax system to inflation: the standard deduction, the personal exemption, and rate brackets. The Tax Reform Act of 1986 also indexed the earned income tax credit. OBRA of 1990 made no significant change to the indexing of these provisions.

D. CAPITAL GAINS AND LOSSES

In General

Capital gains are subject to special tax treatment in a variety of ways. In addition to special capital gains tax rates discussed later, possibly the most significant feature of capital gains taxes is that no tax is levied on the gain until the asset is sold. This feature, called realization taxation, is one way in which the income concepts of the Internal Revenue Code depart from the concepts generally used by economists. Under the economic concept of income, increases in the value of an asset during a taxable period are income, even if the asset is not sold. Conversely, under this concept, losses in asset value would reduce income. Under a realization system, gains are not taxed until realized or received in some way by the taxpayer. Not taxing the gain until the asset is sold or disposed of and the gain is "realized" means that the taxpayer gets the advantage of deferral of taxation on the gain.

The advantage of deferral can be seen in the comparison between $100 invested in a capital asset that grows at a rate of 8 percent per year, and $100 in a bond, savings account or other interest-bearing asset that yields 8-percent interest per year. After 10 years, total gain on the capital asset equals $116. If the asset is sold, total after-tax gain (assuming a marginal tax rate of 28 percent) equals $83. The interest-bearing investment, on the other hand, has not been growing at a rate of 8 percent per year. Rather, assuming a marginal tax rate of 28 percent, the after-tax rate of growth on this investment has equalled only 5.76 percent (0.72 × 8 percent). After 10 years, the total after-tax yield on the interest-bearing investment equals only $75—compared with the $83 after-tax gain on the capital asset. This example does not take into account differences in cash flow. Since the bondholder generally has the option to receive the income as cash each year, he or she can consume the income or reinvest it without disturbing the underlying asset.

The second significant feature of capital gains taxation is that the gain is not reduced for inflation. The importance of this can be seen in the extreme example of an asset that grows at a nominal rate of 8 percent per year, over a period of time in which inflation also equals 8 percent per year. At the end of 10 years, the nominal value of the asset is $216, the nominal gain is $116, and the tax on that gain (if the asset were sold) would equal $32. However, over the same period of time, prices have increased at a rate such that $216 has no more purchasing power than did $100 at the beginning of the 10 year period. The taxpayer who sold the asset in this example pays a $32 tax on the "gain," even though the gain in the asset has increased the taxpayer's purchasing power not at all over the period.

A third significant feature of capital gains taxation is often termed the "bunching" problem. When a capital asset is sold, gain earned over many years is realized all in 1 year. As a result, the taxpayer's income may be greatly increased in 1 year by the gain, rather than moderately increased over each of the years in which the gain was accrued. In a progressive tax system, the bunching of income in 1 year for tax purposes means that the marginal rate applicable to that gain may be much higher than it would have been had the gain been taxed as it accrued. After the Tax Reform Act of 1986, where there were only two statutory marginal rates, the problem of additional income pushing taxpayers into higher marginal rate brackets is less than it has been in previous years, but not entirely nonexistent. While OBRA of 1990 added a third statutory rate of 31 percent, the tax rate for long-term capital gains is still capped at a top rate of 28 percent.

A fourth feature of capital gains taxation is the treatment of gains at death. Inheritors of capital assets are permitted to increase, or "step up," the basis of the capital asset to the fair market value of the asset at the time of the decedent's death. This treatment means that there is no tax on the capital gain accrued on an inherited asset before the death of the decedent. For example, if an individual buys three shares of stock for $100, and holds the shares until death, when they are worth $150, the basis of the shares for the estate equals $150. If the shares are sold at a time when their value equals $150, the gain is zero. The $50 of gain accrued in the decedent's lifetime is untaxed.

Capital Gains Rates

Beginning in 1991, the maximum rate on long-term capital gains for individuals is 28 percent. Net capital gains are currently taxed at the individual's ordinary tax rate, subject to a maximum rate of 28 percent. Thus, individuals in the 15 and 28 percent brackets face the same marginal rate for both ordinary income and capital gains. Individuals in the top bracket face a 31-percent marginal rate on their ordinary income but a 28-percent marginal rate on their long-term capital gains income.

Between 1920 and 1986, the top marginal rate on long-term capital gains was typically lower than the rate on ordinary income. Table 9 shows that the top marginal rate on capital gains has varied between 20 percent and 49 percent in just the last three decades. The preferential rate has been contingent on the taxpayer's holding the asset for some specified minimum period of time. Under present law, the holding period necessary for the preferential rate is 1 year. Often, the preferential rate is accomplished by an exclusion, rather than an alternative rate. For example, in 1986, the taxpayer was permitted to exclude 60 percent of net long-term capital gain, resulting in a top marginal rate of 20 percent (equal to 40 percent times the 50 percent maximum rate on ordinary income).

The Tax Reform Act of 1986 eliminated the preferential rate for long-term capital gains. As a result, the maximum statutory rate was 28 percent although, as with ordinary income, the maximum effective rate for taxable years 1988, 1989, and 1990 equaled 33 percent for taxpayers with income in the phaseout ranges. OBRA of 1990 created a top rate of 31 percent for ordinary income, and a maximum 28-percent rate for long-term capital gains.

Capital Losses

That gains and losses on capital assets are taken into account only when realized has an important implication for the tax treatment of capital losses. Realization taxation, if completely unrestricted, would permit taxpayers to sell capital assets with losses, and deduct the losses against ordinary income, while holding onto assets with gains and deferring tax on the gain. Because gains are not taxed at all on assets held at death, the deferral on gain could be infinite, while the immediate deductibility of losses would be unchecked. There are a number of restrictions on taxpayers' ability to use this approach (often called "cherrypicking") to capital gains taxation. First, a taxpayer's realized capital losses must be deducted (netted) against capital gains realized in that year. If the taxpayer's capital loss exceeds capital gain, only $3,000 of the excess capital loss may be deducted against ordinary income in that year. The remaining capital loss may be carried over into successive taxable years and deducted either against capital gains realized in those years, or against ordinary income, subject to the $3,000 limitation each year.

In addition, "wash sale" rules restrict a taxpayer's ability to sell a capital asset, realize the loss, and then repurchase the asset. Specifically, a taxpayer may not deduct the loss on a loss asset if sale and purchase of similar assets take place within a 60-day period. Additional rules apply to restrict more sophisticated versions of the cherrypicking strategy.

E. The Minimum Tax

The minimum tax requires an alternative tax computation for taxpayers who make excessive use of deductions and exclusions so as to reduce their tax burden below a politically acceptable amount. The minimum tax represents a compromise between the congressional desire to encourage certain economic activities through preferences in the Internal Revenue Code and the belief that individuals with substantial economic income should pay at least some tax.

The first minimum tax was an "add-on" minimum tax introduced by the Tax Reform Act of 1969. The tax was computed as 10 percent on a list of certain deductions and exclusions ("preference items") to the extent they exceeded the sum of $30,000 and the regular income tax.

The "add-on" system eventually proved ineffective in requiring that taxpayers with substantial economic incomes pay at least some tax. Accordingly, the minimum tax systems for both individuals and corporations were ultimately converted to "alternative minimum tax" systems, intended generally to provide a more comprehensive measurement of economic income than the old add-on system. For individuals, this change was begun in the Revenue Act of 1978, with additional changes made in the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1986. For corporations, the conversion to the alternative minimum tax system was made in the Tax Reform Act of 1986.

Under present law, the minimum tax for individuals is computed as an alternative tax. To calculate the minimum tax burden, the taxpayer computes a new tax base, which equals adjusted gross income, plus the taxpayer's tax preferences, less certain itemized deductions and (for taxpayers in certain income ranges) an exemption. Tax liability equals the greater of the regular tax or the alternative minimum tax.

Beginning in 1991, the alternative minimum tax rate for individuals equals 24 percent. The 24-percent rate was enacted by OBRA of 1990. Under the Tax Reform Act of 1986, the alternative minimum tax rate for individuals equaled 21 percent from 1937 through 1990.

TABLE 1.—HISTORY OF FEDERAL INDIVIDUAL INCOME TAX EXEMPTIONS AND FIRST AND TOP BRACKET RATES

[In dollars unless otherwise specified]

Year	Personal exemptions[1]			Tax rates[2]			
				First bracket		Top bracket	
	Single persons	Married couples	Dependents	Rate (percent)	Taxable income up to	Rate (percent)	Taxable income over
1913–15	3,000	4,000		1	20,000	7	500,000
1916	3,000	4,000		2	20,000	15	2,000,000
1917	1,000	2,000	200	2	2,000	67	2,000,000
1918	1,000	2,000	200	6	4,000	77	1,000,000
1919–20	1,000	2,000	200	4	4,000	73	1,000,000
1921	1,000	[3] 2,500	400	4	4,000	73	1,000,000
1922	1,000	[3] 2,500	400	4	4,000	56	200,000
1923	1,000	[3] 2,500	400	3	4,000	56	200,000
1924	1,000	2,500	400	[4] 1.5	4,000	46	500,000
1925–28	1,500	3,500	400	[4] 1⅛	4,000	25	100,000
1929	1,500	3,500	400	[4] ⅜	4,000	24	100,000
1930–31	1,500	3,500	400	[4] 1⅛	4,000	25	100,000
1932–33	1,000	2,500	400	4	4,000	63	1,000,000
1934–35	1,000	2,500	400	[5] 4	4,000	63	1,000,000
1936–39	1,000	2,500	400	[5] 4	4,000	79	5,000,000
1940	800	2,000	400	[5] 4.4	4,000	81.1	5,000,000
1941	750	1,500	400	[5] 10	2,000	81	5,000,000
1942–43 [6]	500	1,200	350	[5] 19	2,000	88	200,000
1944–45 [7]	500	1,000	500	23	2,000	[8] 94	200,000
1946–47	500	1,000	500	19	2,000	[8] 86.45	200,000
1948–49	600	1,200	600	16.6	4,000	[8] 82.13	400,000
1950	600	1,200	600	17.4	4,000	[8] 91	400,000

TABLE 1.—HISTORY OF FEDERAL INDIVIDUAL INCOME TAX EXEMPTIONS AND FIRST AND TOP BRACKET RATES—Continued

[In dollars unless otherwise specified]

Year	Personal exemptions[1]			Tax rates[2]			
	Single persons	Married couples	Dependents	First bracket		Top bracket	
				Rate (percent)	Taxable income up to	Rate (percent)	Taxable income over
1951	600	1,200	600	20.4	4,000	[8] 91	400,000
1952–53	600	1,200	600	22.2	4,000	[8] 92	400,000
1954–63	600	1,200	600	20	4,000	[8] 91	400,000
1964	600	1,200	600	16	1,000	77	400,000
1965–67	600	1,200	600	14	1,000	70	200,000
1968	600	1,200	600	14	1,000	[9] 75.25	200,000
1969	600	1,200	600	14	1,000	[9] 77	200,000
1970	625	1,250	625	14	1,000	[9] [10] 71.75	200,000
1971	675	1,350	675	14	1,000	[10] [11] 70	200,000
1972–78	[12] 750	[12] 1,500	[12] 750	[13] 14	1,000	[10] [11] 70	200,000
1979–80	1,000	2,000	1,000	[13] 14	2,100	[10] [11] 70	212,000
1981	1,000	2,000	1,000	[13] [14] 13.825	2,100	[10] [11] [14] 69.125	212,000
1982	1,000	2,000	1,000	[13] 12	2,100	[10] 50	106,000
1983	1,000	2,000	1,000	[13] 11	2,100	[10] 50	106,000
1984	1,000	2,000	1,000	[13] 11	2,100	[10] 50	159,000
1985	1,040	2,080	1,040	[13] 11	2,180	[10] 50	165,480
1986	1,080	2,160	1,080	[13] 11	2,270	[10] 50	171,580
1987	1,900	3,800	1,900	[13] 11	3,000	[10] 38.5	90,000
1988	[15] 1,950	[15] 3,900	[15] 1,950	[13] [16] 15	29,750	[10] [17] 28	29,750
1989–90	[15] [18] 2,000	[15] [18] 4,000	[15] [18] 2,000	[13] [16] 15	([18])	[10] [17] 28	([19])
1991 and after	[15] [18] 2,150	[15] [18] 4,300	[15] [18] 2,150	[20] 15	([18])	[10] 31	([19])

[1] From 1948 through 1986 taxpayers who were blind or over sixty-five were allowed additional exemptions.

[2] Taxable income excludes zero-bracket amount from 1977 through 1986. Rates shown apply only to married persons filing joint returns beginning in 1948. For the relationship of other rates to these rates. From 1922 through 1986 lower rates applied to long-term capital gains.

[3] If net income exceeded $5,000, a married person's exemption was $2,000.

[4] After earned-income credit equal to 25 percent of tax on earned income.

[5] Before earned-income deduction equal to 10 percent of earned net income.

[6] Exclusive of Victory Tax.

[7] Exemptions shown were for surtax only. Normal tax exemption was $500 per tax return plus earned income of wife up to $500 on joint returns.

[8] Subject to the following maximum effective rate limitations [year, and maximum effective rate (in percent)]:

1944–45—90; 1946–47—85.5; 1948–49—77.0; 1950—87.0; 1951—87.2; 1952–53—88.0; and 1954–63—87.0.

[9] Includes surcharge of 7.5 percent in 1968, 10 percent in 1969, and 2.5 percent in 1970.

[10] Does not include add-on minimum tax on preference items or alternative minimum tax.

[11] Earned income was subject to maximum marginal rates of 60 percent in 1971 and 50 percent from 1972 through 1981.

[12] In addition to the personal exemptions, a per capita tax credit of $30 was allowed for 1975, and $35 per capita or 2 percent of the first $9,000 of taxable income, whichever was larger, for 1976–78.

[13] Beginning in 1975, a refundable earned-income credit is allowed for low-income individuals.

[14] After tax credit of 1.25 percent against regular tax.

[15] The personal exemption is phased out for higher taxable incomes.

[16] The rate applied to the first $29,750 of taxable income is gradually increased to the top-bracket rate between taxable incomes of $71,900 and $149,250 in 1988. The phaseout range is adjusted for inflation beginning in 1989.

[17] Excludes the effects of the phaseout of the 15 percent bracket and the personal exemptions. See footnotes 15 and 16.

[18] The exemption is adjusted for inflation beginning in 1990.

[19] The bracket limits are adjusted for inflation beginning in 1989.

[20] The phaseout of the 15-percent rate, effective in 1988-90, is repealed for years beginning after December 31, 1990.

Sources: Relevant public laws and summaries prepared by the Joint Committee on Taxation. Much of the material is reprinted, with permission, from J. Pechman, "Federal Tax Policy," pp. 313, 314, Brookings Institute, Washington, D.C. (5th ed. 1987).

TABLE 2.—RECEIPTS BY SOURCE

[In billions of dollars]

Source	1990 actual	Estimate					
		1991	1992	1993	1994	1995	1996
Individual income taxes	466.9	492.6	529.5	572.0	632.9	688.9	742.1
Corporation income taxes	93.5	95.9	101.9	109.0	120.6	130.0	138.3
Social insurance taxes and contributions	380.0	402.0	429.4	463.8	501.0	534.1	568.5
On-budget	(98.4)	(103.7)	(114.1)	(125.1)	(135.5)	(144.2)	(151.3)
Off-budget	(281.7)	(298.3)	(315.3)	(338.7)	(365.5)	(389.8)	(417.2)
Excise taxes	35.3	44.8	47.8	50.1	52.0	53.6	47.8
Estate and gift taxes	11.5	12.2	13.3	14.1	13.7	14.6	15.7
Customs duties and fees	16.7	17.7	19.3	20.8	22.0	22.7	23.9
Miscellaneous receipts	27.3	26.2	23.9	22.8	23.2	23.5	24.5
Total receipts	1,031.3	1,091.4	1,165.0	1,252.7	1,365.3	1,467.3	1,560.7
On-budget	(749.7)	(793.2)	(849.8)	(914.0)	(999.8)	(1,077.5)	(1,143.5)
Off-budget	(281.7)	(298.3)	(315.3)	(338.7)	(365.5)	(389.8)	(417.2)

Source: Budget of the United States Government, Fiscal Year 1992.

TABLE 3.—PERCENTAGE COMPOSITION OF RECEIPTS BY SOURCE, SELECTED YEARS 1980-95

[Percentages]

	1980	1985	1989	1995 (estimate)
Individual income tax	47.2	45.6	45.0	46.9
Corporation income tax	12.5	8.4	10.5	8.9
Social insurance taxes and contributions	30.5	36.1	36.3	36.4
On-budget	(8.6)	(10.8)	(9.7)	(9.8)
Off-budget	(21.9)	(25.4)	(26.6)	(26.6)
Excise taxes	4.7	4.9	3.4	3.7
Other	5.1	5.0	4.8	4.1
Total	100.0	100.0	100.0	100.0
On-budget	(78.1)	(74.6)	(73.4)	(73.4)
Off-budget	(21.9)	(25.4)	(26.6)	(26.6)

Source: Budget of the United States Government for Fiscal Year 1992.

TABLE 4.—PERSONAL EXEMPTIONS AND STANDARD DEDUCTIONS, 1990 AND 1991

	1990	1991
Personal exemption	$2,050	$2,150
Standard deduction:		
Married couples filing jointly	5,450	5,700
Head of household	4,750	5,000
Unmarried individual	3,250	3,400
Married individual filing separately	2,725	2,850
Additional standard deduction for blind and elderly individuals:		
Married individual	650	650
Unmarried individual	800	850

Source: Internal Revenue Code.

TABLE 5.—INDIVIDUAL INCOME TAX RATES, 1990

Taxable income	Marginal rate (percent)
Married couple filing jointly:	
0 to $32,450	15
$32,450 to $78,400	28
$78,400 to $185,730 [1]	33
$185,730 and over	28
Unmarried individuals:	
0 to $19,450	15
$19,450 to $47,050	28
$47,050 to $109,100 [1]	33
$109,100 and over	28
Head of household:	
0 to $26,050	15
$26,050 to $67,200	28
$67,200 to $157,890 [1]	33
$157,890 and over	28
Married individuals filing separate returns:	
0 to $16,225	15
$16,225 to $39,200	28
$39,200 to $146,530 [1]	33
$146,530 and over	28

[1] The maximum amount of income subject to the 33-percent rate depends on the number of exemptions claimed by the taxpayer. This table assumes 2 exemptions for married couples filing jointly and heads of household, and 1 exemption for unmarried individuals and married individuals filing separately.

Source: Internal Revenue Code.

TABLE 6.—INDIVIDUAL INCOME TAX RATES, 1991

Taxable income	Marginal rate (percent)
Married couple filing jointly:	
0 to $34,000	15
$34,000 to $82,150	28
$82,150 and over	31
Unmarried individuals:	
0 to $20,350	15
$20,350 to $49,300	28
$49,300 and over	31
Head of household:	
0 to $27,300	15
$27,300 to $70,450	28
$70,450 and over	31
Married individuals filing separate returns:	
0 to $17,000	15
$17,000 to $41,075	28
$41,075 and over	31

Source: Internal Revenue Code.

TABLE 7.—EARNED INCOME TAX CREDIT, 1990 AND 1991

	1990	1991
Maximum earnings subject to credit	$6,810	$7,140
Credit rate—one child (percent)	14	16.7
Credit rate—two or more children (percent)	14	17.3
Maximum income before phaseout of credit begins	$10,730	$11,250
Phaseout endpoint (max. income for taxpayer to receive any credit)	$20,260	$21,242
Maximum credit—one child	$953	$1,192
Maximum credit—two or more children	$953	$1,235
Supplemental young child (under 1 year old) credit (percent)		5
Maximum supplemental young child credit		$357
Supplemental health insurance credit (percent)		6
Maximum supplemental health insurance credit		$428

Source: Computed from Internal Revenue Code provisions.

TABLE 8.—TAX ENTRY POINTS, 1990 AND 1991

	1990		1991	
	No EITC	With EITC	No EITC	With EITC
Married couple filing jointly (2 dependent children)	$13,650	$16,295	$14,300	$17,436
Head of household (1 dependent child)	8,850	13,414	9,300	14,590
Unmarried individual (no dependents)	5,300	(1)	5,500	(1)

[1] Unmarried individuals with no qualifying children are not eligible for the EITC.

Source: Computed from Internal Revenue Code provisions.

TABLE 9.—MAXIMUM MARGINAL TAX RATE ON CAPITAL GAINS, 1954–91

[In percent]

Year	Ordinary or alternative tax	Ordinary or alternative plus minimum tax	Ordinary or alternative plus minimum plus maximum tax
1954	25.0	25.0	25.0
1955	25.0	25.0	25.0
1956	25.0	25.0	25.0
1957	25.0	25.0	25.0
1958	25.0	25.0	25.0
1959	25.0	25.0	25.0
1960	25.0	25.0	25.0
1961	25.0	25.0	25.0
1962	25.0	25.0	25.0
1963	25.0	25.0	25.0
1964	25.0	25.0	25.0
1965	25.0	25.0	25.0
1966	25.0	25.0	25.0
1967	25.0	25.0	25.0
1968	26.9	26.9	26.9
1969	27.5	27.5	27.5
1970	30.2	32.3	32.3
1971	32.5	34.3	38.8
1972	35.0	36.5	45.5
1973	35.0	36.5	45.5
1974	35.0	36.5	45.5
1975	35.0	36.5	45.5
1976	35.0	39.9	49.1
1977	35.0	39.9	49.1
1978	33.8	39.0	48.3
1979	28.0	28.0	28.0
1980	28.0	28.0	28.0
1981	23.7	23.7	23.7
1982	20.0	20.0	20.0
1983	20.0	20.0	20.0
1984	20.0	20.0	20.0
1985	20.0	20.0	20.0
1986	20.0	20.0	20.0
1987	28.0	28.0	28.0
1988 [1]	28.0	28.0	28.0
1989 [1]	28.0	28.0	28.0
1990 [1]	28.0	28.0	28.0
1991	28.0	28.0	28.0

[1] The 28-percent rate in 1988–90 applies to the highest income group. For taxpayers with income in the range in which the benefits of personal exemptions and the 15-percent rate are phased out, the marginal tax rate on capital gains is 33 percent.

Notes: In 1978, the maximum rate was reduced from 35 percent to 28 percent for gains realized after Oct. 31, 1978. In 1981, the maximum rate was reduced from 28 percent to 20 percent for gains realized after June 20, 1981.

Source: Compiled by Congressional Budget Office. See also Office of the Secretary of the Treasury, Office of Tax Analysis, "Report to Congress on the Capital Gains Tax Reductions of 1985" (September 1978).

APPENDIX I

[From Federal Individual Income Tax Terms: An Explanation, CRS Report for Congress, April 20, 1990]

FEDERAL INDIVIDUAL INCOME TAX TERMS AN EXPLANATION

TOTAL INCOME

Total income is the broadest measure of all income. Total income includes income which is excluded by statue from taxation. Often, it is difficult to determine exact value for such income. For example, an employee of a health club may be allowed free access of the health club after employment hours by his or her employer. Another example is the imputed rental value of owner-occupied housing.

GROSS INCOME

Gross income, the measure of income used for tax purposes, is the sum total of all income not specifically tax-exempt and required to be reported to the Internal Revenue Service (IRS), before adjustments are taken to allow for special types of expenses which Congress has determined should not be taxed. Gross income includes employee compensation such as wages, salaries, and tips, taxable interest and dividend income, business and farm income (net of expenses), capital gains, income from rents, royalties, trusts, estates, and partnerships, and taxable pensions and annuities. Gross income does not include items of income explicitly excluded from tax (see next section on "Exclusion").

EXCLUSION

An exclusion refers to an item of income that is not included in gross income because it is exempt from tax. Examples of items of income which are exempt from income taxation and, hence, excluded from gross income, are State and local bond interest income, welfare, small gifts, and the tax-exempt portion of pension, annuity, social security, and railroad retirement income. A clergy's tax-free housing allowance, foster care payments and qualified scholarship and fellowship grants are also not considered taxable income. Also, under certain conditions, a taxpayer can exclude a limited amount of disability pay such as from workers' compensation. Except for tax-exempt interest, exclusions are not required to be reported to IRS.

ADJUSTMENT TO INCOME

Adjustments to income are those items of expenditure which are deducted from gross income in arriving at adjusted gross income. These may include payments to Keogh or IRA retirement plans, forfeited interest penalties, and alimony payments. Adjustments to income function similarly to deductions, except that unlike deductions, adjustments are calculated in arriving at adjusted gross income, and hence can be claimed by all taxpayers, whether or not they use the standard deduction amount or have itemized deductions (see "Deduction" which follows).

ADJUSTED GROSS INCOME

Adjusted gross income (AGI) is the basic measure of an individual's income capacity for purposes of the individual income tax. Adjusted gross income equals gross income less qualifying adjustments to income. Thus, components of adjusted gross income include wages, salaries, tips, and other employee compensation, dividend and interest income, capital gains, business and farm income, and income from royalties, trusts estates, partnerships, rents, and taxable pensions and annuities. The sum of income received from these sources is reduced by the adjustments previously discussed to arrive at adjusted gross income. Adjusted gross income serves as the base for computing many limits under the tax law, such as those on the medical expense and miscellaneous itemized deductions. Adjusted gross income is the income measurement before deductions and personal exemptions are taken into account.

DEDUCTION

Deductions from adjusted gross income are allowed for certain types of expenditures for which income taxation is deemed inappropriate or inadvisable. Deductions function like adjustments and exclusions in their effect on tax liability. Deductions may be claimed by itemizing one's deductible expenses on a separate schedule, totaling the value of the deductions, and subtracting the total from adjusted gross income. Deductions are allowed for medical expenses in excess of 7.5 percent of AGI, State and local property, income, and a few other taxes, home mortgage interest and limited amounts of other interest paid, contributions to charity, casualty and theft losses in excess of 10 percent of AGI, investment expenses and employee business expenses in excess of 2 percent of AGI, and a few other "miscellaneous" expenses. The alternative way in which deductions may be claimed is by using the so-called standard deduction amount, which allows taxpayers to remove a fixed portion of their adjusted gross income from taxation without the burden of itemizing individual deductible expenses. Only individuals with sizable deductible expenses, or typically those with middle- to high-range incomes, find it advantageous to itemize their deductions.

The standard deduction amounts for 1990 are $5,450 for married taxpayers who file a joint tax return; $3,250 for a single taxpayer; and $4,750 for a taxpayer who qualifies as the head of a household. In addition, an additional standard deduction amount is available to those 65 or older and those taxpayers who are legally blind. This additional standard deduction is $600 for each taxpayer who file a joint return and $750 for those who file either as single or as the head of a household. These amounts are adjusted for inflation.

EXEMPTION

Personal exemptions are allowed for the taxpayer, his or her spouse (if married and filing a joint return), and each dependent. Each exemption claimed reduces income subject to taxation by $2,000 for tax year 1989 and $2,050 for tax year 1990 (and will be adjusted for inflation for future years). Exemptions function like deductions, adjustments, and exclusions. The personal exemptions combined with the standard deduction amount are designed to remove low-income households from the tax rolls, and exempt a minimum level of income from taxation for other families.

TAX EXEMPT

The expression "tax-exempt" is used to describe types of income and organizations which are not subject to taxation. Interest income from State and local bonds, for example, is exempt from Federal income taxes. Certain qualifying non-profit organizations are exempt from Federal income taxation. These provisions are not described as exemptions on the tax return, however; they are more properly termed "exclusions."

TAXABLE INCOME

Taxable income, the narrowest measure of income used on the income tax return, is equivalent to adjusted gross income reduced by the amounts claimed for personal exemptions, and either the standard deduction or itemized deductions. Taxable income is the base upon which the income tax rate is applied to calculate income tax liability, either through the tax tables or the tax rate schedules.

CREDIT

Tax credits are subtracted from the first computation of the tax bill, which is derived from the tax tables or tax rate schedules, and hence, credits reduce tax liability directly. Tax credits are available to all taxpayers, whether they itemize deductions or not. Examples of tax credits include the credit for the elderly and the permanently and totally disabled, the earned income tax credit, the credit for child and dependent care expenses, and the foreign tax credit. These credits can be divided into two categories. "Refundable" credits are those which can exceed tax liability, resulting in a direct payment from the Treasury. (The direct payment is called a "refund" even when nothing has been paid to be refunded.) Non-refundable credits can only be used to the extent they eliminate tax liability; they cannot result in a payment.

TAX LIABILITY

Tax liability is the amount of Federal income tax owed by the taxpayer to the Federal Government, after taking into account allowable tax credits, but before subtracting withheld taxes and estimated tax payments already paid. Thus, tax liability represents the taxpayer's total Federal income tax bill for his/her tax year. A taxpayer's tax liability may be negative, if the amount of refundable tax credits exceeds his calculated tax bill before allowing for the credits. Non-refundable credits can only reduce tax liability to zero, but cannot make a taxpayer's tax liability negative.

TAXES DUE

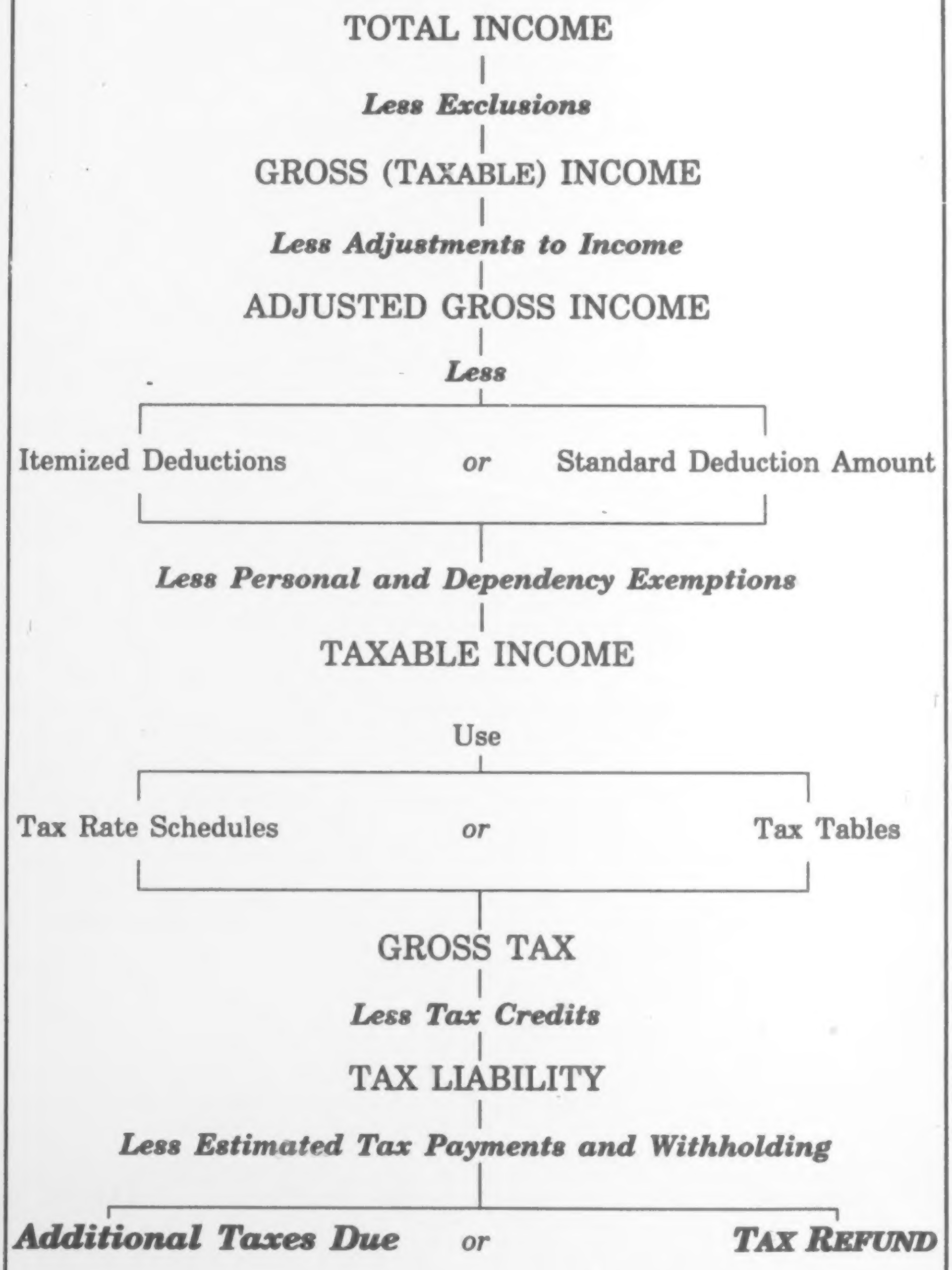
If tax liability exceeds Federal taxes withheld, estimated quarterly taxes paid, and certain other credits, then the taxpayer will owe the Federal Government additional Federal individual income taxes.

TAX REFUND

A tax refund is a payment by the Federal Government to a taxpayer whose withheld taxes or estimated tax payments exceeded his final tax liability, entitling him to a refund to remedy his having overpaid his tax bill. A taxpayer with negative tax liability is also entitled to a tax refund, although this refund is not a refund of overpaid taxes, but a payment of a negative tax. In any case, a tax refund is based on the taxpayer's individual tax situation and is not part of a general plan to reduce tax collections.

The flow chart illustrating the relationship among the income tax terms discussed in this report appears on the following page.

Relationship Between Individual Income Tax Terms


TOTAL INCOME
Less Exclusions
GROSS (TAXABLE) INCOME
Less Adjustments to Income
ADJUSTED GROSS INCOME
Less
Itemized Deductions
or
Standard Deduction Amount
Less Personal and Dependency Exemptions
TAXABLE INCOME
Use
Tax Rate Schedules
or
Tax Tables
GROSS TAX
Less Tax Credits
TAX LIABILITY
Less Estimated Tax Payments and Withholding
Additional Taxes Due
or
TAX REFUND

Section 2. Corporate Income Tax

A. OVERVIEW

Tax Rates and Receipts

An income tax has been assessed upon corporate earnings continuously since 1909. Table 1 provides a compilation of the marginal rates of tax imposed on corporate income from 1909 to 1989. Table 2 shows total corporate income tax receipts, as a percentage of total Federal receipts, and as a percentage of GNP, for the period 1960–95.

Corporate Income Tax Base

The Internal Revenue Code ("Code") allows corporations various deductions, credits, exclusions and deferrals (collectively "reductions") against earnings in the determination of income subject to tax. Certain of these reductions, for example, the deduction for the cost of labor directly related to the production of inventory, can properly be allocated to income generated in a particular year. Accordingly, this cost of earning taxable income should be allowable as a deduction in a normative system which taxes net corporate income.

Other reductions against corporate earnings result from Code provisions that provide economic incentives to certain classes of corporations or for corporations engaging in particular activities. Such reductions are known as tax expenditures. A tax expenditure is analogous to a direct outlay of funds by the Federal Government and results in lowered tax receipts otherwise assessable through the corporate income tax. (See Part V., "Federal Tax Expenditures.")

An example of a corporate tax reduction constituting a tax expenditure is the orphan drug credit. Corporations may qualify for a credit of up to 50 percent of the amount of qualified testing expenditures attributable to drugs for rare diseases. This expenditure has been justified by Congress as an appropriate subsidy for the production of drugs which, although necessary for the health of a small percentage of the population, would not be commercially available otherwise. The Joint Committee on Taxation has estimated that the tax expenditure for the orphan drug credit will be less than $50 million for the period 1990–94.

It is sometimes difficult to determine whether a particular reduction should be viewed as a tax expenditure or as a true cost of earning income. For example, interest is generally fully deductible on debt issued by a corporation. In 1989, the Committee on Ways and Means held 7 days of public hearings on mergers, acquisitions, and corporate transactions that increase the aggregate levels of corporate debt. Several witnesses testified that the corporate interest deduction is an inappropriate tax expenditure resulting in a subsidy for merger and acquisition activity. Other witnesses stated that interest expense is a cost of doing business for a corporation and should be fully allowed as a deduction in a normative income tax system.

In addition, some reductions, such as depreciation deductions for plants and equipment, exhibit qualities of both costs of earning income and tax expenditures. The staff of the Joint Committee on Taxation assumes, for example, that a normal tax structure would permit straight-line cost recovery deductions on structures and equipment over the useful life of the asset, while other deductions or incentives could be considered tax expenditures.

Table 3 provides estimates by the staff of the Joint Committee on Taxation for corporate tax expenditures for fiscal years 1980–94.

B. STRUCTURE OF THE CORPORATE INCOME TAX

Four years after the passage of the first tax on corporate income in 1909, the 16th amendment and the Revenue Act of 1913 (Ch. 16, 38 Stat. 114) imposed an income tax on individuals. Since that time, the Code has required a "two-tier" system of taxing corporate income. Corporate earnings are taxed when received or accrued, depending upon the accounting system utilized by the corporation. Such earnings are generally taxed again when distributed to shareholders. For example, a corporation with taxable income of $100,000 would be subject to a 34-percent rate and pay $34,000 in taxes. If the remaining earnings of $66,000 were distributed to shareholders, it would be subject to individual income tax rates up to 31 percent and result in $20,460 in tax. Accordingly, the $100,000 in corporate earnings would be subject to a total tax of $54,460, representing a 54-percent rate.

The two-tier tax system has been the subject of significant policy debate for several years. Some commentators believe that there is little theoretical justification for assessing two levels of taxation upon corporate earnings. Several forms of full or partial integration of the corporate and individual tax systems have been suggested. For example, a shareholder credit equal to the tax assessed on corporate earnings has been proposed, as well as a shareholder exclusion of a portion of distributed corporate earnings. In conjunction with the legislation leading to enactment of the 1986 Act, the Committee on Ways and Means adopted, and the House passed, a proposal which would allow a 10 percent dividends-paid deduction for corporations phased in over a 10-year period. The provision was not adopted, however, by the Senate Finance Committee or the conferees to the 1986 Act.

On the other hand, other commentators view the two-tier tax system as properly assessing tax upon the privilege of doing business in corporate form. Clearly, the Federal Treasury obtains significant revenues as a result of the two-tier system. In addition, Congress has taken several actions in the recent past to strengthen the two-tier system. In the 1986 Act, Congress repealed an exception to taxation of corporate earnings upon the liquidation of a corporation. In the Omnibus Reconciliation Act of 1987 (the "1987 Act") Congress enacted a provision treating certain publicly traded limited partnerships as corporations for tax purposes, thereby limiting the opportunity for taxpayer-initiated corporate integration. Both of these provisions will be discussed in further detail in the subsection entitled "Recent Legislative Developments."

Not all entities that are considered corporations for State law purposes are subject to the Federal corporate income tax. The Code exempts, in whole or in part, several forms of corporate entities from the corporate income tax. Typically, these entities are subject to significant ownership or operating restrictions. For example, a qualifying small business corporation, or S corporation, is taxed on a pass-through basis, with most items of income and loss accounted for only at the shareholder level. S corporations, however, are permitted no more than 35 shareholders and are subject to several organizational and operational restrictions. Other entities receive a hybrid form of tax treatment. For example, certain income from a qualified regulated investment company ("RIC") is taxed only at the shareholder level, while certain income may be subject to corporate-level taxation. A RIC is subject to several organizational restrictions and is limited in the type and amount of investment activity it may conduct. In addition, financial intermediaries, such as certain banks, savings and loan institutions, and insurance companies, have rules which ameliorate the impact of corporate-level taxation through special deductions for reserves. Other forms of corporations which receive hybrid treatment under the Code include real estate investment trusts, real estate mortgage investment companies, certain cooperatives, and companies specifically exempted from tax, such as charitable institutions.

C. Recent Legislative Developments

Due to the complexity and sophistication of corporate transactions and the comprehensive nature of the applicable Code provisions, frequent legislative revisions are made to corporate income tax provisions. The 1986 Act, in particular, modified several corporate income tax provisions to broaden the corporate income tax base and reduce the rates. Some recent major legislative developments include the following:

1. *Repeal of the* General Utilities *Doctrine.* The 1986 Act repealed a long-standing rule that, upon liquidation of the corporation, excluded from taxation unrealized or "built-in" gains of the corporation. This rule is generally viewed as originating in *General Utilities & Operating Company* v. *Helvering,* 296 U.S. 200 (1935), and was later codified. The 1986 Act repealed the *General Utilities* doctrine, thereby generally requiring that a corporate-level tax be imposed on the built-in gains of a corporation upon its liquidation. In section 10223 of the 1987 Act, Congress clarified that the requirement of corporate-level taxation in cases of liquidations extends to corporate dispositions utilizing subsidiaries—so-called "mirror subsidiary" transactions.

2. *Master Limited Partnerships (MLP's).* As part of the policy debate relating to the two-tier corporate income tax system, Congress has focused at times upon taxpayer-initiated or self-help planning measures aimed at avoiding corporate-level income taxation. One such planning device was the master limited partnership, a

limited partnership with publicly traded interests that could conduct business and be owned by investors in a manner similar to a corporation, but which was taxable as a partnership and thereby exempt from corporate-level taxation. In June and July, 1987, the Subcommittee on Select Revenue Measures of the Committee on Ways and Means held hearings on the tax policy implications of master limited partnerships (serial 100-39). As a result of these hearings, the Committee on Ways and Means passed a measure classifying certain publicly traded partnerships with active trade or business income as corporations for purposes of the Code. This provision, in slightly modified form, was adopted by Congress as section 10211 of the 1987 Act.

3. *Corporate Integration: Debt Versus Equity.* In the first half of 1989, the Committee on Ways and Means held 7 days of hearings on the tax law implications of corporate mergers, acquisitions and other transactions that increase the aggregate levels of corporate debt. These hearings included testimony on policy issues implicated by the two-tier system, including various full- or partial-integration proposals, as well as testimony on proposals aimed at curbing the use of the deduction for corporate interest expense as a self-help form of integration. The testimony also focused on the policy debate of whether the corporate interest deduction is, on the one hand, an integral part of a normative system for the taxation of corporate earnings or, on the other hand, an inappropriate tax subsidy in certain circumstances. In addition, the hearings focused upon the proper tax classification of an instrument issued by a corporation as an obligation of the entity (debt) or an interest subject to the risks of ownership of the entity (equity). This classification issue has great practical significance to the tax liability of a corporation, because interest paid on the debt of a corporation is generally deductible in computing taxable income, while corporate earnings distributed to shareholders in the form of dividends on equity are not deductible.

As a result of these hearings and congressional deliberations, the Ways and Means Committee included several provisions as part of its reconciliation of the fiscal 1990 budget (H.R. 3150). These provisions were subsequently enacted into law as part of the Omnibus Budget Reconciliation Act of 1989 ("1989 Act").

Section 7202 of the 1989 Act modifies the treatment of certain instruments paying a rate of interest in excess of prevailing commercial rates and not paying such interest on a current basis, such as certain original issue discount bonds. The provision has the effect of bifurcating these instruments. In part the yield on such instrument will be deducted by the issuer when paid, while excessive yield rates are treated like equity for certain purposes and are never deductible.

4. *Earnings Stripping.* In addition, section 7210 of the 1989 Act curbs the ability of foreign investors and other tax-exempt entities to take advantage of Code provisions to obtain a competitive advantage over domestic corporate taxpayers, specifically through the use of so-called "earnings stripping" transactions. The 1989 Act also contains provisions requiring reporting of merger and acquisition activity to the Internal Revenue Service and broadening the

Treasury Department's authority to classify corporate instruments as debt, equity, or a hybrid combination of debt and equity.

5. *Omnibus Budget Reconciliation Act of 1990 ("1990 Act").* The 1990 Act contains several provisions modifying the taxation of corporations, including provisions that: (i) require the accrual of redemption premiums of certain preferred stock, (ii) impose corporate level tax on divisive restructuring transactions in connection with certain changes of ownership, provided that a shareholder's 50 percent ownership is attributable to stock that the shareholder acquired directly or indirectly in a purchase or similar transaction within the previous 5 years, and (iii) modify the tax treatment of certain debt-for-debt exchanges and stock-for-debt exchanges in corporate restructurings.

In addition, the 1990 Act requires insurance companies to amortize policy acquisition expenses, and reduces the deduction allowed to property and casualty insurance companies for losses incurred by the estimated recoveries of salvage and subrogation claims attributable to such losses.

TABLE 1.—HISTORY OF FEDERAL CORPORATION INCOME TAX EXEMPTIONS AND RATES, 1909–PRESENT

Year	Exemption, brackets, or type of tax	Rate (percent)
1909–13	$5,000 exemption	1
1913–15	None after March 1, 1913	1
1916	None	2
1917	None	6
1918	$2,000 exemption	12
1919–21	$2,000 exemption	10
1922–24	$2,000 exemption	12.5
1925	$2,000 exemption	13
1926–27	$2,000 exemption	13.5
1928	$3,000 exemption	12
1929	$3,000 exemption	11
1930–31	$3,000 exemption	12
1932–35	None	13.75
1936–37	Range of graduated normal tax:	
	First $2,000	8
	Over $40,000	15
	Range of graduated surtax on undistributed profits	7–27
1938–39	First $25,000	12.5–16
	Over $25,000	[1] 19
1940	First $25,000	14.85–18.7
	$25,000–$31,964.30	38.3
	$31,964.30–$38,565.89	36.9
	Over $38,565.89	24
1941	First $25,000	21–25
	$25,000–$38,461.54	44
	Over $38,461.54	31
1942–45	First $25,000	25–29
	$25,000–$50,000	53
	Over $50,000	40
1946–49	First $25,000	21–25
	$25,000–$50,000	53
	Over $50,000	38
1950	First $25,000	23
	Over $25,000	42
1951	First $25,000	28.75
	Over $25,000	50.75
1952–63	First $25,000	30
	Over $25,000	52
1964	First $25,000	22
	Over $25,000	50
1965–67	First $25,000	22
	Over $25,000	48
1968–69 [2]	First $25,000	24.2
	Over $25,000	52.8
1970 [2]	First $25,000	22.55
	Over $25,000	49.2
1971–74	First $25,000	22

TABLE 1.—HISTORY OF FEDERAL CORPORATION INCOME TAX EXEMPTIONS AND RATES, 1909–PRESENT—Continued

Year	Exemption, brackets, or type of tax	Rate (percent)
	Over $25,000	48
1975–78	First $25,000	20
	Next $25,000	22
	Over $50,000	48
1979–81	First $25,000	17
	$25,000–$50,000	20
	$50,000–$75,000	30
	$75,000–$100,000	40
	Over $100,000	46
1982	First $25,000	16
	$25,000–$50,000	19
	$50,000–$75,000	30
	$75,000–$100,000	40
	Over $100,000	46
1983	First $25,000	15
	$25,000–$50,000	18
	$50,000–$75,000	30
	$75,000–$100,000	40
	Over $100,000	46
1984–86	First $25,000	15
	$25,000–$50,000	18
	$50,000–$75,000	30
	$75,000–$100,000	40
	$100,000–$1,000,000	46
	$1,000,000–$1,405,000	51
	Over $1,405,000	46
1987 [3]	First $25,000	15
	$25,000–$50,000	16.5
	$50,000–$75,000	27.5
	$75,000–$100,000	37
	$100,000–$335,000	42.5
	$335,000–$1,000,000	40
	$1,000,000–$1,405,000	42.5
	Over $1,405,000	40
1988–Present	First $50,000	15
	$50,000–$75,000	25
	$75,000–$100,000	34
	$100,000–$335,000	39
	Over $335,000	34

[1] Less adjustments: 14.025 percent of dividends received and 2.5 percent of dividends paid.

[2] Includes surcharge of 10 percent in 1968 and 1969 and 2.5 percent in 1970.

[3] Rates are averages of the 1986 and 1988 rates.

Sources: Relevant public laws and summaries prepared by the Joint Committee on Taxation. Reprinted with permission from J. Pechman, "Federal Tax Policy," pp. 321, 322, The Brookings Institute, Washington, D.C. (5th ed. 1987).

TABLE 2.—CORPORATE INCOME TAX RECEIPTS, TOTAL AND AS PERCENT OF FEDERAL RECEIPTS AND PERCENT OF GNP, 1934–96

Fiscal year	Corporate income tax receipts [1] (millions)	Corporate income tax receipts as percent of total Federal receipts	Corporate income tax receipts as percent of GNP
1934	$364	12.3	0.6
1935	529	14.7	.8
1936	719	18.3	.9
1937	1,038	19.3	1.2
1938	1,287	19.1	1.5
1939	1,127	17.9	1.3
1940	1,197	18.3	1.2
1941	2,124	24.4	1.9
1942	4,719	32.2	3.3
1943	9,557	39.8	5.4
1944	14,838	33.9	7.3
1945	15,988	35.4	7.5
1946	11,883	30.2	5.6
1947	8,615	22.4	3.9
1948	9,678	23.3	3.9
1949	11,192	28.4	4.2
1950	10,449	26.5	3.9
1951	14,101	27.3	4.5
1952	21,226	32.1	6.2
1953	21,238	30.5	5.8
1954	21,101	30.3	5.7
1955	17,861	27.3	4.6
1956	20,880	28.0	5.0
1957	21,167	26.5	4.8
1958	20,074	25.2	4.5
1959	17,309	21.8	3.6
1960	21,494	23.2	4.2
1961	20,954	22.2	4.0
1962	20,523	20.6	3.7
1963	21,579	20.3	3.7
1964	23,493	20.9	3.7
1965	25,461	21.8	3.8
1966	30,073	23.0	4.1
1967	33,971	22.8	4.3
1968	28,665	18.7	3.4
1969	36,678	19.6	3.9
1970	32,829	17.0	3.3
1971	26,785	14.3	2.5

TABLE 2.—CORPORATE INCOME TAX RECEIPTS, TOTAL AND AS PERCENT OF FEDERAL RECEIPTS AND PERCENT OF GNP, 1934–96—Continued

Fiscal year	Corporate income tax receipts [1] (millions)	Corporate income tax receipts as percent of total Federal receipts	Corporate income tax receipts as percent of GNP
1972	32,166	15.5	2.8
1973	36,153	15.7	2.8
1974	38,620	14.7	2.7
1975	40,621	14.6	2.7
1976	41,409	13.9	2.4
TQ	8,460	10.4	1.9
1977	54,892	15.4	2.8
1978	59,952	15.0	2.8
1979	65,677	14.2	2.7
1980	64,600	12.5	2.4
1981	61,137	10.2	2.0
1982	49,207	8.0	1.6
1983	37,022	6.2	1.1
1984	56,893	8.5	1.5
1985	61,331	8.4	1.6
1986	63,143	8.2	1.5
1987	83,926	9.8	1.9
1988	94,508	10.4	2.0
1989	103,291	10.4	2.0
1990	93,507	9.1	1.7
1991 (estimate)	95,866	8.8	1.7
1992 (estimate)	101,913	8.7	1.7
1993 (estimate)	109,913	8.7	1.7
1994 (estimate)	120,578	8.8	1.8
1995 (estimate)	130,024	8.9	1.8
1996 (estimate)	138,285	8.9	1.8

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[1] Beginning in 1987, includes trust fund receipts for the hazardous substance superfund. The trust fund amounts are as follows (in millions of dollars): 1987: 196; 1988: 313; 1989: 292; 1990: 461; 1991: 320; 1992: 394; 1993: 465; 1994: 548; 1995: 662; 1996: 750.

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 1992, tables 2.1, 2.2, and 2.3.

TABLE 3.—CORPORATE TAX EXPENDITURES (ESTIMATED)

[In millions of dollars]

Fiscal year	Corporate tax expenditures	Fiscal year	Corporate tax expenditures
1980	44,115	1989	37,300
1981	48,775	1990	38,700
1982	55,140	1991	40,700
1983	56,225	1992	46,900
1984	75,230	1993	47,200
1985	94,885	1994	48,200
1986	[1] 119,900	1995	49,300
1987	[1] 97,100	1996	50,600
1988	62,000		

[1] Estimated prior to enactment of the Tax Reform Act of 1986.

Source: Staff of the Joint Committee on Taxation.

Section 3. Estate and Gift Taxes

A. OVERVIEW

Estate and gift taxes are transfer taxes imposed upon the privilege of transferring property. As such, they are to be distinguished from inheritance taxes, which most States impose upon the privilege of receiving property from deceased persons. The Federal tax system does not include inheritance taxes.

Several justifications, apart from the generation of revenues, have been offered for the imposition of estate and gift taxes. Historically, they have been viewed, in Franklin D. Roosevelt's words, as an appropriate means of preventing "the perpetuation of great and undesirable concentrations of control in a relatively few individuals over the employment and welfare of many, many others." They have also been justified as an appropriate means of recompensing the Government for the protection of property rights. It has also been argued that estate and gift taxes play an important role in backstopping the Federal income tax system, which currently does not include in its base wealth accumulated during an individual's lifetime. That is, because of the "step up" in basis, capital gains on assets held at death are exempt from the income tax. Such assets, however, may be subject to the estate tax if held in a sufficiently large estate. From this perspective, estate and gift taxes contribute to the progressivity of the Federal tax system. Some observers challenge this view and contend that the nontaxation of capital gains on assets held at death is not a feature of the income tax that requires "correction".

The estate and gift taxes have been criticized as reducing incentives for economic growth and saving, even though it is generally acknowledged that estate and gift taxes have less of an impact on these incentives than do income taxes that raise equivalent amounts of revenue. Estate and gift taxes have also been criticized as being burdensome to families that are only beginning to prosper. These concerns are mitigated, however, by the relatively large exemptions provided from estate and gift taxes.

Estate and gift taxes provide only a relatively minor portion of total Federal revenues. For instance, in 1989, estate and gift taxes accounted for only about $8.7 billion out of total Federal receipts of nearly $1 trillion. (See table 1, Part IV, "Historical Tables".)

B. HISTORICAL BACKGROUND

Estate tax

The first estate tax was enacted in 1916 to help finance United States efforts in the First World War. The estate tax has been in place continuously since then.

Initially, the estate tax rates ranged from 1 to 10 percent, with a $50,000 exemption. Table 1 shows how the rates and exemption amounts have fluctuated historically up until the present. As that table shows, rates reached a maximum of 77 percent during the Second World War and have declined to a current maximum rate of 55 percent. The maximum rate is scheduled to decrease to 50 percent in 1993.

Gift tax

The first gift tax was enacted in 1924 to prevent wealthy individuals from avoiding the relatively new estate tax by disposing of their property before death. After 2 years, the gift tax was repealed and replaced by a provision that treated all gifts made within 2 years of death as being part of the decedent's estate. Constitutional objections arose to this provision, and the gift tax was reinstituted in 1932.

As table 2 shows, gift tax rates from 1932 until 1976 were 75 percent of the estate tax rates. The 1932 law allowed a lifetime gift-tax exemption of $50,000, which was reduced to $40,000 in 1935 and to $30,000 in 1942. This separate lifetime gift-tax exemption was repealed in 1977, when the estate and gift tax systems were unified.

The 1932 law also allowed taxpayers to make annual gifts tax-free, in an amount not to exceed $5,000 for each donee. This annual per donee exclusion was reduced to $4,000 in 1938 and $3,000 in 1942, and was increased to $10,000 in 1982.

Unification of gift and estate tax systems

The Tax Reform Act of 1976 ("1976 Act") introduced a major structural change by unifying the estate tax and gift tax systems, so that a single progressive rate schedule applied to the aggregate transfers made at death and by gift during life.

The 1976 Act also replaced the separate estate and gift tax exemptions with a single unified tax credit. This credit was originally set at $30,000, which equated to an exemption amount of $120,667. This credit has been increased until reaching in 1987 its current level of $192,800, which equates to an exemption of $600,000.

The 1976 Act also liberalized the treatment of property transfers between spouses. To equalize the treatment of community property States and noncommunity property States, the law since 1948 had allowed marital deductions for estate and gift tax purposes for one-half the value of noncommunity property passing to a spouse (i.e., noncommunity property was given the same treatment that automatically accrues to community property, which by law belongs equally to each spouse). The 1948 law also permitted husbands and wives to split gifts to third parties between themselves, which effectively doubled exemption amounts available and allowed for potentially lower graduated rates.

The 1976 Act increased the marital deduction for estate tax purposes to the higher of one-half the estate or $250,000. For gift tax purposes, the marital deduction was 100 percent for the first $100,000, and one-half the amount over $200,000. The Economic Recovery Tax Act of 1981 simplified and further liberalized these rules by allowing an unlimited marital deduction for estate and gift tax purposes. These laws retained the provisions for gift splitting between spouses. The 1976 legislation also provided relief for family farms and small businesses by providing favorable valuation rules (Code section 2032A) and by providing a 14-year extension for payment of estate tax where the estate consists largely of interests in a closely held business (Code section 6166).

The 1976 Act also introduced the generation-skipping tax, which originally applied only to transfers of trust property benefiting more than one generation. The purpose was to prevent avoidance of transfer taxes through use of trusts. In the 1986 Act, the generation-skipping tax was made more comprehensive by extending it to cover outright transfers that skip generations. The generation-skipping tax is computed by reference to the maximum Federal estate tax rate.

C. CURRENT STRUCTURE OF ESTATE AND GIFT TAX SYSTEM

The estate tax

The estate tax is levied on the gross estate less various deductions. The gross estate includes the value of all property in which the decedent had an ownership interest at death. Generally, the value of the decedent's property interest is its fair market value at death, although the executor may elect to use an alternate valuation date, generally 6 months after death. Real property used in farming or other closely held businesses may be eligible for reduced valuation.

The following deductions are allowable from the gross estate to determine the taxable estate: (1) administration and funeral expenses; (2) claims against the estate and obligations; (3) casualty and theft losses; (4) the marital deduction for most property passing between spouses; and (5) the charitable deduction.

A single unified rate schedule applies for both estate and gift taxes. The rates begin at 18 percent on the first $10,000 of taxable transfers and increase to 55 percent for transfers over $3,000,000. The graduated rates and unified credit are gradually phased out for transfers over $10,000,000, until being completely phased out at $21,040,000.

The gross estate tax is computed by first figuring a tentative tax on the sum of the taxable estate and the amount of adjusted taxable gifts that were made by the decedent after 1976 and that are not includable in the gross estate. One then subtracts from this tentative tax the total amount of tax payable for gifts made after 1976.

Various credits are subtracted from the gross estate tax to yield the net estate tax payable. The most important of these credits are the unified credit and the credit for State death taxes. The unified credit of $192,800 effectively exempts from taxation estates valued at $600,000 or less.

The gift tax

The gift tax is imposed on all transfers of property or property interests that are made without adequate consideration, excepting certain tuition and medical expense payments and transfers to qualified political organizations. The value for gift tax purposes is the fair market value when the gift is made.

In determining the amount of taxable gifts for the year, an annual exclusion is allowed for the first $10,000 of gifts made to any one person during the calendar year (except that gifts of future interests in property do not qualify for the annual exclusion). Also deductible are gifts to charities and gifts made to the donor's spouse.

The gift tax is computed in a manner similar to the estate tax, except that the applicable rate is determined by taking into account all taxable gifts made after June 6, 1932. This applicable rate is then applied only to the gifts made in the current calendar year. To the extent it has not previously been used up, the unified credit reduces any gift tax liability; any unified credit remaining at death is then used against the estate tax.

Estate valuation freezes

The Omnibus Budget Reconciliation Act of 1987 enacted the provisions of section 2036(c) of the Internal Revenue Code, relating to estate valuation freezes. These provisions were intended to curb abusive avoidance of the Federal estate and gift tax. Generally, the estate valuation freeze involved the transfer of property by dividing the property into separate interests, one representing the appreciation potential and the other current income rights plus various other rights of control. Typically, the appreciation rights would be transferred, and the income and other rights would be retained. Thus the value of the property in the transferor's estate would be "frozen" to exclude any future appreciation, even though the transferor might in fact still enjoy control over the property. The estate freeze allowed for minimization of transfer taxes partly by valuation techniques that resulted in less than the property's full value being subject to transfer tax, because of assumptions made in valuing separately the appreciation interests and income interests at different times. The 1987 law addressed this situation generally by deeming the transfer of the property to be incomplete until both the appreciation rights and the income interests were transferred.

In response to concerns about the breadth and complexity of the provisions enacted in 1987, the Omnibus Budget Reconciliation Act of 1990 repealed section 2036(c) retroactively to the date of its enactment. In its place, the 1990 Act enacted provisions intended to accomplish similar objectives in a more focused and less burdensome manner. Generally, these provisions provided rules to value more accurately the various interests in an estate valuation freeze as of the time of the transfer. These provisions are contained in chapter 14 of the Internal Revenue Code (sections 2701 through 2704).

TABLE 1.—HISTORY OF ESTATE AND GIFT TAX EXEMPTIONS AND EXCLUSIONS

Revenue Act	Estate tax		Gift tax	
	Specific exemption [1]	Insurance exclusion	Specific exemption [2]	Annual exclusion per donee
1916	$50,000	....	(3)	(3)
1918	50,000	$40,000	(3)	(3)
1924	50,000	40,000	$50,000	$500
1926	100,000	40,000	(3)	(3)
1932	50,000	40,000	50,000	5,000
1935	40,000	40,000	40,000	5,000
1938	40,000	40,000	40,000	4,000
1942	60,000	....	30,000	3,000
1976	[4] 175,625	....	[4] 175,625	3,000
1981	[5] 600,000	....	[5] 600,000	10,000

[1] Specific exemption granted to estates of nonresident citizens dying after May 11, 1934, on the same basis as resident decedents. No exemptions granted to estates of resident aliens until October 21, 1942, when a $2,000 exemption was made available.

[2] Under the Revenue Act of 1924, exemption allowed each calendar year. Under the 1932 and later acts, specific exemption allowed only once.

[3] No gift tax.

[4] The Tax Reform Act of 1976 unified the estate and gift taxes and provided a unified tax credit in lieu of exemptions. The credit translates into the amount of exemption shown in the table. The credit increased from 1977 to 1981 as follows: 1977, $30,000; 1978, $34,000; 1979, $38,000; 1980, $42,500; 1981, $47,000. These credits are equivalent to the following amounts of exemptions, respectively: 1977, $120,667; 1978, $134,000; 1979, $147,333; 1980, $161,563; 1981, $175,625.

[5] The Economic Recovery Tax Act of 1981 increases the amount of unified credit from 1982 to 1987 and later years as follows: 1982, $62,800; 1983, $79,300; 1984, $96,300; 1985, $121,800; 1986, $155,800; 1987 and later years, $192,800. The credits are equivalent to the following amounts of exemptions, respectively: 1982, $225,000; 1983, $275,000; 1984, $325,000; 1985, $400,000; 1986, $500,000; 1987 and later years, $600,000.

Sources: Relevant public laws and summaries prepared by the Joint Committee on Taxation. Reprinted with permission from J. Pechman, "Federal Tax Policy," p. 337, The Brookings Institute, Washington, D.C. (5th ed. 1987).

TABLE 2.—HISTORY OF ESTATE AND GIFT TAX RATES

Revenue Act	Date of death	Tax rates (percent)		Bracket subject to—	
		Estates	Gifts	Minimum rate (thousands of dollars)	Maximum rate (thousands of dollars)
1916	Sept. 9, 1916, to Mar. 2, 1917.	1.0 to 10.0		0 to 50	5,000 and over
1917 [1]	Mar. 3, 1917 to Oct. 3, 1917.	1.5 to 15.0		0 to 50	5,000 and over
1917 [2]	Oct. 4, 1917, to Feb. 23, 1919.	2.0 to 25.0		0 to 50	10,000 and over
1918	Feb. 24, 1919, to Feb. 25, 1926.	1.0 to 25.0	[3] 1.0 to 25.0	0 to 50	10,000 and over
1926	Feb. 26, 1926, to June 5, 1932.	1.0 to 20.0		0 to 50	10,000 and over
1932	June 6, 1932, to May 10, 1934.	1.0 to 45.0	0.75 to 33.5	0 to 10	10,000 and over
1934	May 11, 1934, to July 29, 1935.	1.0 to 60.0	0.75 to 45.0	0 to 10	10,000 and over
1935	July 30, 1935, to June 24, 1940.	2.0 to 70.0	1.55 to 52.5	0 to 10	50,000 and over
1940	June 25, 1940, to Sept. 19,1941.	[4] 2.2 to 77.0	[4] 1.65 to 57.75	0 to 10	50,000 and over
1941	Sept. 20, 1941, to Dec. 31, 1976.	3.0 to 77.0	2.25 to 57.75	0 to 5	10,000 and over
1976	Jan. 1, 1977, to Dec. 31, 1981.	[5] [6] 18.0 to 70.0	[5] [6] 18.0 to 70.0	0 to 10	5,000 and over

1981	Jan. 1, 1982, to Dec. 31, 1982.	[5] [6] 18.0 to 65.0	[5] [6] 18.0 to 65.0	0 to 10	4,000 and over
	Jan. 1, 1983, to Dec. 31, 1983.	[5] [6] 18.0 to 60.0	[5] [6] 18.0 to 60.0	0 to 10	3,500 and over
1984	Jan. 1, 1984, to Dec. 31, 1987.	[5] [6] 18.0 to 55.0	[5] [6] 18.0 to 55.0	0 to 10	3,000 and over
	Jan 1, 1988 and later years	[5] [6] 18.0 to 50.0	[5] [6] 18.0 to 50.0	0 to 10	2,500 and over

[1] Revenue Act of 1917.

[2] War Revenue Act of 1917.

[3] In effect June 2, 1924, to December 31, 1925.

[4] Includes defense tax equal to 10 percent of tax liability.

[5] Gift tax rates are the same as the estate tax rates.

[6] Allowance for small estates provided by a tax credit (see table 1, notes 4 and 5).

Sources: Relevant public laws and summaries prepared by the Joint Committee on Taxation. Reprinted with permission from J. Pechman, "Federal Tax Policy," p. 336, The Brookings Institute, Washington, D.C. (5th ed. 1987).

TABLE 3.—HISTORY OF ESTATE AND GIFT TAX RECEIPTS, 1940–1996

[In millions of dollars]

Fiscal year	Estate and gift taxes	Fiscal year	Estate and gift taxes
1940	353	1969	3,491
1941	403	1970	3,644
1942	420	1971	3,735
1943	441	1972	5,436
1944	507	1973	4,917
1945	637	1974	5,035
1946	668	1975	4,611
1947	771	1976	5,216
1948	890	TQ	1,455
1949	780	1977	7,327
1950	698	1978	5,285
1951	708	1979	5,411
1952	818	1980	6,389
1953	881	1981	6,787
1954	934	1982	7,991
1955	924	1983	6,053
1956	1,161	1984	6,010
1957	1,365	1985	6,422
1958	1,393	1986	6,958
1959	1,333	1987	7,493
1960	1,606	1988	7,594
1961	1,896	1989	8,745
1962	2,016	1990	11,500
1963	2,167	1991 estimate	12,241
1964	2,394	1992 estimate	13,265
1965	2,716	1993 estimate	14,051
1966	3,066	1994 estimate	13,721
1967	2,978	1995 estimate	14,559
1968	3,051	1996 estimate	15,698

[1] Deposits of earnings by the Federal Reserve System.

Source: Budget of the United States Government, Fiscal year 1992.

Section 4. Tax-Exempt Bonds

OVERVIEW

The Internal Revenue Code generally excludes interest on obligations ("bonds") of States and local governments from Federal income tax. Qualified governmental units may issue tax-exempt bonds to finance general governmental operations and facilities, including facilities such as schools, roads, and water and sewer facilities. They may also issue notes in anticipation of taxes or other revenues (so-called tax anticipation or revenue anticipation notes (TRANs)).

Additionally, subject to certain restrictions, qualified governmental units may provide tax-exempt financing (i.e., private activity bonds) for use by religious, charitable, scientific, or educational organizations (section 501(c)(3) organizations), and for certain activities of other nongovernmental persons (exempt facility bonds, qualified redevelopment bonds, qualified small issue bonds, qualified student loan bonds, and mortgage revenue bonds).

The Internal Revenue Code of 1986 (the "Code") does not define a governmental bond directly. Rather, a bond is generally deemed governmental if the amount of private business use made of its proceeds does not exceed certain prescribed percentages or no more than a certain amount of the proceeds is loaned to nongovernmental persons. Specifically, an issue is an issue of private activity bonds if (1) an amount exceeding 10 percent of the proceeds is to be used for any private business use, and (2) more than 10 percent of the payment of principal of, or interest on, the issue is to be made with respect to such private business use of the bond proceeds, or is otherwise secured by payments or property used for private business use. These private business use limits for output facility financing (e.g., public power facilities) is the lesser of 10 percent or $15 million.

The limit on the amount of proceeds that may be loaned to private persons without creating a private activity bond is the lesser of 5 percent or $5 million. The Code also includes a limitation on disproportionate and unrelated private business use of bond proceeds.

The use of bond-financed property is treated as use of bond proceeds. A person may be a user of bond proceeds and bond-financed property as a result of ownership, actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or any other arrangement such as a take-or-pay or other output-type contract. Use (including use as an industrial customer) on the same basis as the general public is not taken into account.

All activities of section 501(c)(3) organizations, the Federal Government, and other persons (other than States and local governments) who are not natural persons are treated as private business activities. The determination of who uses bond proceeds or bond-financed property, generally, is made by reference to the ultimate user of the proceeds or property.

HISTORICAL BACKGROUND

The volume of outstanding tax-exempt debt has increased dramatically since 1977. The volume of long-term, tax-exempt debt increased from approximately $45 billion in 1977 to over $151 billion in 1986. A dramatic 35 percent decline in bond issuance occurred from 1985 to 1986. This decline reflected the impact of Federal tax reform in at least two respects. First, the enormous volume of tax-exempt debt issued in 1985 to beat the expected effective date of the Tax Reform Act of 1986's (the "1986 Act") provisions made the issuance of additional debt unnecessary in the immediate future in many instances. Second, the 1986 Act imposed significant restrictions on both the types of tax-exempt bonds which could be issued and the volume of that debt. The decline in volume generally was with respect to private activity bonds, rather than governmental bonds.

A number of provisions in the 1986 Act influenced the volume of tax-exempt debt by affecting the demand for such debt. Most important, the reductions in marginal tax rates for both individuals and corporations reduced the advantage of holding tax-exempt securities. Another provision subjected the interest on certain private activity bonds, otherwise tax-exempt, to the alternative minimum tax, currently imposed at a 24 percent tax rate (21 percent until enactment of the Omnibus Budget Reconciliation Act of 1990) for individuals and a 20-percent rate for corporations. This minimum tax is imposed if the interest on these bonds plus other forms of "tax preferences" subject to this tax amounts to a significant percentage of total taxable income. The interest on all tax-exempt debt also is subject to the corporate minimum tax because of its inclusion in the corporate adjusted current earnings ("ACE") preference. (Before 1990, a book unreported profits preference achieved the same result.)

Finally, banks are no longer able to deduct the interest they pay when they borrowed to finance the purchase of most tax-exempt bonds.

Conversely, the elimination of most ways of sheltering income from tax under the 1986 Act caused some investors to increase their purchases of tax-exempt bonds.

PRIVATE ACTIVITY BONDS

In general, the interest on private activity bonds is taxable. The interest on qualified bonds, however, is tax-exempt if the State volume limitation and certain other requirements are met. Qualified bonds are exempt facility bonds, qualified mortgage bonds, qualified veterans' mortgage bonds, qualified small issue bonds, qualified student loan bonds, qualified redevelopment bonds, and qualified 501(c)(3) bonds. Table 1 illustrates the differing volumes of private activity bonds by type of activity.

Exempt facility bonds are bonds at least 95 percent of the proceeds of which are to be used to finance airports, docks and wharves, mass commuting facilities, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the local furnishing of electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, or high-speed rail facilities.

Qualified mortgage bonds are bonds at least 95 percent of the proceeds of which is to be used to finance the purchase, or qualifying rehabilitation or improvement, of single-family homes for first-time owners within the jurisdiction of the issuer of the bonds. The acquisition cost of a residence financed with qualified mortgage bonds generally may not exceed 90 percent of the average area purchase price. Additionally, qualified mortgage bond financing is available only to mortgagors whose family incomes do not exceed 115 percent of the higher of the median family income for the area in which the residence is located or the statewide median family income. Qualified governmental units may elect to exchange qualified mortgage bond authority (on a 4:1 basis) for authority to issue mortgage credit certificates which entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest (between 10 and 50 percent) on mortgage loans on their principal residences. Certain States also may issue qualified veterans' mortgage bonds, at least 95 percent of the proceeds of which is to be used to make mortgage loans to qualified veterans for the purchase of owner-occupied residences.

Qualified small issue bonds are bonds at least 95 percent of the proceeds of which is to be used for manufacturing facilities or certain property for first-time farmers. Small issue bonds are issues having an aggregate authorized face amount (including certain outstanding prior issues) of $1 million or less. Alternatively, the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the 6-year period beginning 3 years before the date of issue and ending 3 years thereafter, may not exceed $10 million. Interest on qualified small issue bonds is taxable if the aggregate face amount of all outstanding tax-exempt bonds that may be allocated to any beneficiary of the qualified small issue bonds exceeds $40 million.

Qualified student loan bonds are bonds issued by qualified governmental units or qualified scholarship funding corporations in connection with the Guaranteed Student Loans and Parent Loans for Undergraduate Students programs of the United States Department of Education. These bonds must be both guaranteed by the United States Department of Education and eligible for special assistance payments (SAP) (unless such SAP payments are precluded solely by virtue of the tax-exempt status of the bonds). Additionally, the interest charged student borrowers must be restricted as provided in the Higher Education Act of 1965. Qualified student loan bonds also include obligations used to make or finance loans under certain State supplemental student loan programs.

Qualified 501(c)(3) bonds are bonds at least 95 percent of the proceeds of which is to be used by a section 501(c)(3) organization or a governmental unit and the facilities financed with which are owned by a 501(c)(3) organization or a governmental unit. With the exception of qualified hospital bonds, the maximum outstanding amount of qualified 501(c)(3) bonds of which a 501(c)(3) organization may be the beneficiary is $150 million.

Qualified redevelopment bonds must be part of an issue at least 95 percent of the proceeds of which is to be used for redevelopment purposes in a locally designated blighted area and the payment of debt service on which is primarily secured either by taxes of general applicability imposed by a general purpose governmental unit or by a pledge of incremental property tax revenues reserved exclusively for debt service on the issue and similar issues to the extent necessary to cover debt service. Incremental tax revenues are increased real property tax revenues attributable to increases in assessed value by reason of the redevelopment.

A variety of restrictions apply to private activity bonds: a 2 percent of proceeds limit on costs of issuance which may be paid from bond proceeds, a weighted average maturity limit of 120 percent of the weighted average economic life of the assets financed with the bonds, a 25 percent of proceeds limit on the financing of most land, a prohibition on the financing of most nonrehabilitated existing property, the requirement of a public hearing and approval process prior to issuance, and certain sanctions for changes in use of bond-financed property.

VOLUME LIMITATION

Each State has an annual volume limitation on the amount of private activity bonds which it may issue equal to the greater of $150 million or $50 per capita. Qualified 501(c)(3) bonds and bonds for airports, docks and wharves, and governmentally owned solid waste disposal facilities and a portion of bonds for high speed rail facilities are not subject to the volume limitation. Bond volume authority not used by year-end may be carried forward for specific purposes for a period not to exceed 3 years.

ARBITRAGE RESTRICTIONS

Interest on any otherwise tax-exempt bond is taxable if the obligation is an arbitrage bond. An arbitrage bond is an obligation any portion of the proceeds of which is reasonably expected (at the time of issuance of the bond) to be used, or subsequently is intentionally used, to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments. Exceptions to this general restriction are provided for materially higher yielding obligations held for certain temporary periods (principally 3 years for construction funds) and for reasonably required reserve or replacement funds (generally not exceeding 10 percent of proceeds).

Permissible arbitrage earnings generally must be rebated to the Federal Government. Exceptions are provided for: (1) governmental issues the issuer of which issues no more than $5 million during the calendar year, (2) governmental and 501(c)(3) and certain private activity bond issues used primarily for construction projects if the proceeds are expended in accordance with a percentage schedule within 2 years of issuance, and (3) issues the proceeds of which (with the exception of a debt service reserve fund) are expended within 6 months of issuance.

ADVANCE REFUNDINGS

Limits are placed on the number of times a bond issue may be advance refunded. An advance refunding issue is one issued to pay debt service on another issue more than 90 days before the prior issue is to be retired. Bonds issued prior to 1986 may be advance refunded twice. Bonds issued after 1985 may be advance refunded once. Bonds issued before 1986, which were advance refunded two or more times before March 15, 1986, may be advance refunded one additional time after March 14, 1986. Private activity bonds may not be advance refunded.

MISCELLANEOUS

Certain requirements and limitations apply to all tax-exempt bonds, e.g., a prohibition on any Federal guarantee, limitations on bonds issued to hedge against increases in interest rates, a requirement that the bonds be issued in registered form, and a requirement that certain information be reported to the Internal Revenue Service.

TABLE 1.—PRIVATE ACTIVITY TAX-EXEMPT BONDS, 1987: VOLUME OF PRIVATE ACTIVITY BONDS BY TYPE OF ACTIVITY

[In millions of dollars]

Type of activity	All issues			New issues		
	Total	Short-term	Long-term	Total	Short-term	Long-term
Total	39,676	2,456	37,220	16,648	931	15,717
Student loan	2,066	380	1,686	1,418	190	1,228
Private exempt entities, total	12,894	251	12,643	5,206	49	5,157
Hospital	8,070	5	8,065	2,584	1	2,583
Other 501(c)(3)	4,824	246	4,578	2,623	48	2,575
Mortgage, total	8,159	286	7,873	3,111	220	2,891
Qualified mortgage	7,549	116	7,433	2,939	50	2,889
Veterans' mortgage	610	170	440	172	170	2
Redevelopment	35	....	35	35	....	35
Small issue	2,302	5	2,298	1,208	2	1,207
Industrial parks	49	....	49	13	....	13
Exempt facility:						
Residential rental	2,480	....	2,480	913	....	913
Sports facilities	72	....	72	11	....	11
Convention facilities	18	2	16	....	....	....
Airports, docks, etc.	2,859	896	1,963	1,216	101	1,115
Airport	1,818	894	924	934	99	835
Docks and wharves	867	2	865	237	2	235
Mass commuting	25	....	25	25	....	25
Parking	149	....	149	20	....	20
Sewage and waste disposal, total	2,378	66	2,313	1,369	37	1,332
Sewage	108	2	106	85	2	83
Solid waste disposal	2,270	64	2,206	1,285	35	1,249
Pollution control	3,423	1	3,422	1,137	....	1,137
Water furnishing	390	....	390	288	....	288
Hydroelectric generating	84	....	84	25	....	25
Local heating and cooling	30	....	30	14	....	14
Electric energy and gas	812	300	513	431	169	262
Hazardous waste	....	....	....	....	....	....
Other	1,625	270	1,354	254	164	90

Note: Includes 1987 issues from the 1987 file only.

Section 5. Federal Excise Taxes

A. OVERVIEW

Generally, excise taxes are a form of consumption tax. That is, they are imposed on the manufacture, sale, or consumption of certain goods or services. In addition, excise taxes are levied on licenses to pursue certain occupations, on certain corporate privileges, and on activities that Congress seeks to discourage or prohibit.

Some excise taxes are levied at specific rates per unit. For example, the excise tax for cigarettes is set at cents-per-thousand; the excise tax for distilled spirits is set at dollars-per-proof-gallon; and the excise tax for crude oil is set at cents-per-barrel. The revenue from excise taxes set at specific rates does not vary directly with changes in the price of the taxed commodity or activity. (Of course, the revenue will be affected by changes in the price, if overall consumption of the good is affected.)

Some excise taxes, by contrast, are levied at ad valorem rates. For example, the excise taxes on firearms and ammunition are set at a percentage of the manufacturer's sales price.

The purposes of excise taxes vary. Certain excise taxes are collected as a user-related tax for the enjoyment of a government service or benefit. Some excise taxes of this type are placed in trust funds to finance services related to the taxed activity. These funds are discussed in detail in section 6 of Part III of this document. Some excise taxes are imposed for general revenue purposes (e.g., tax on telephone service). Certain excise taxes have been levied for revenue purposes as well as general for "sumptuary" (or regulatory) purposes (e.g., taxes on alcoholic beverages, tobacco products, gambling activities).

Certain excise taxes also are imposed to penalize activities Congress seeks to discourage or forestall. An example is the excise tax on failures to fund a pension plan adequately. The tax equals 10 percent of the funding deficiency (that is, the difference between the required contribution and the actual contribution). However, failure to correct the underfunding within a certain specified period results in an excise tax equal to 100 percent of the deficiency. (See table 2, item P.4., for a listing of so-called "penalty" excise taxes.)

Table 1 describes Federal excise-tax rate changes in 1990 legislation. Table 2 shows a schedule of Federal excise taxes in effect as of January 1, 1991. Table 2 indicates whether revenues from the excise tax go into a trust fund (or other special fund), scheduled dates for expiration of the tax or modification of the tax rate, and the relevant section(s) of the Internal Revenue Code. Table 3 shows Federal excise tax receipts for fiscal years 1990 through 1992. Tables 4 and 5 show in greater detail excise taxes on certain chemi-

cals for the hazardous substances Superfund, and on certain imported substances.[1]

B. Federal Excise Tax Rates

TABLE 1.—FEDERAL EXCISE TAX RATE CHANGES IN 1990 LEGISLATION

The following Federal excise tax rate changes were included in 1990 legislation.[1]

Item	Excise Tax Change [2]
Alcohol Excise Taxes	
1. Distilled spirits (sec. 5001)	Tax increased from $12.50 to $13.50 per proof gallon.
2. Wines (sec. 5041): [3]	
Up to 14 percent alcohol	Tax increased from $0.17 to $1.07 per wine gallon.
14 percent to 21 percent alcohol	Tax increased from $0.67 to $1.57 per wine gallon.
21 percent to 24 percent alcohol	Tax increased from $2.25 to $3.15 per wine gallon.
Artificially carbonated wines	Tax increased from $2.40 to $3.30 per proof gallon.
3. Beer (sec. 5051)	Tax increased from $9.00 to $18.00 per barrel generally.[4]

[1] Title XI of the Omnibus Budget Reconciliation Act of 1990 (H.R. 5835; P.L. 101-508).

[2] Effective on January 1, 1991, unless otherwise indicated.

[3] Certain small domestic wineries are entitled to a credit equal to the amount of the wine gallon tax increase on the first 100,000 gallons of wine produced in a calendar year. Small wineries are defined as businesses having aggregate annual production not exceeding 250,000 gallons.

[4] The prior $7.00-per-barrel tax rate remains in effect for certain small breweries (applicable to the first 60,000 barrels produced in domestic breweries with total production not exceeding 2 million barrels per calendar year).

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[1] These tables were prepared by the staff of the Joint Committee on Taxation, and are included in Joint Committee on Taxation, "Schedule of Present Federal Excise Taxes (as of January 1, 1991)," (JCS-3-91) March 4, 1991.

Item	Excise Tax Change	
Tobacco Excise Taxes		
	Tax increased to—	
	Jan. 1, 1991	Jan. 1, 1993
1. Cigars (sec. 5701(a)):		
Small cigars	$0.9375 per thousand.	$1.125 per thousand.
Large cigars [5]	10.625 percent of manufacturers price, up to $25.00 per thousand.	12.75 percent of manufacturers price, up to $30.00 per thousand.
2. Cigarettes (sec. 5701(b)):		
Small cigarettes	$10.00 per thousand (20 cents per pack).	$12.00 per thousand (24 cents per pack).
Large cigarettes	$21.00 per thousand	$25.20 per thousand.
3. Cigarette papers and tubes:		
Papers (sec. 5101(c))	$0.00625 per 50 papers.	$0.0075 per 50 papers.
Tubes (sec. 5701(d))	$0.0125 per 50 tubes.	$0.015 per 50 tubes.
4. Smokeless tobacco:		
Snuff (sec. 5701(e)(1))	$0.30 per pound	$0.36 per pound.
Chewing tobacco (sec. 5701(e)(2))	$0.10 per pound	$0.12 per pound.
5. Pipe tobacco (sec. 5701(f))	$0.5625 per pound	$0.675 per pound.

[5] The tax base for large cigars was changed from "suggested wholesale price" to "manfacturer's price."

Item	Excise Tax Change
Motor Fuels Taxes *	
1. Gasoline (sec. 4081)	Tax increased from 9 cents per gallon to 14 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995.
2. Diesel fuel (secs. 4041(a) (1), 4091))	Tax increased from 15 cents per gallon to 20 cents per gallon generally,[6] effective Dec. 1, 1990–Sept. 30, 1995.
3. Special motor fuels (sec. 4041 (a) (2))	Tax increased from 9 cents per gallon to 14 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995.
4. Methanol and ethanol fuels:	
Methanol fuels from other than petroleum or natural gas (sec. 4041(b)(2))	Tax increased from 3 cents per gallon to 8 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995.
Ethanol fuels from other than petroleum or natural gas (sec. 4041(b)(2))	Tax increased from 3 cents per gallon to 8.6 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995.
Fuels from natural gas (sec. 4041(m))	Tax increased from 4.5 cents per gallon to 7 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995.
5. Gasohol (sec. 4081(c))	Tax increased from 3.33 cents per gallon to 9.56 cents per gallon for fuel from ethanol and to 8.89 cents per gallon for fuel from other than ethanol, effective Dec. 1, 1990–Sept. 30, 1995.
6. Diesohol (secs. 4041(k)(1), 4091(c))	Tax increased from 9 cents per gallon to 14.6 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995.
7. Diesel rail fuel (secs. 4091, 4093(c))	New tax imposed of 2.5 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995.

* See also II. E.2., "Taxes for Leaking Underground Storage Tank Trust Fund," for additional tax of 0.1 cent per gallon (0.05 cent per gallon for methanol and ethanol fuels) on motor fuels (through 1995).

[6] A net Highway Trust Fund tax of 3 cents per gallon continues to apply to certain privately operated, scheduled intercity buses (sec. 6427(b)).

Item	Excise Tax Change
Aviation Excise Taxes	
1. Air passenger ticket tax (sec. 4261)	Tax increased from 8 percent to 10 percent, effective Dec. 1, 1990–Dec. 31, 1995.
2. Domestic air cargo tax (sec. 4271)	Tax increased from 5 percent to 6.25 percent, effective Dec. 1, 1990–Dec. 31, 1995.
3. Fuel taxes for noncommercial aviation:	
Gasoline (secs. 4081, 4041(c))	Tax increased from 12 cents per gallon to 15 cents per gallon, effective Dec. 1, 1990–Dec. 31, 1995.
Nongasoline (jet) (secs. 4041(c), 4091))	Tax increased from 14 cents per gallon to 17.5 cents per gallon, effective Dec. 1, 1990–Dec. 31, 1995.
Nongasoline in alcohol mixture made from ethanol (10% or more alcohol) (sec. 4091(d))	Tax increased from 0 cents per gallon to 4.56 cents per gallon, effective Dec. 1, 1990–Dec. 31, 1995.
Nongasoline in alcohol mixture not made from ethanol (10% or more alcohol) (sec. 4091(e))	Tax increased from 0 cents per gallon to 3.89 cents per gallon, effective Dec. 1, 1990–Dec. 31, 1995.
4. Tax reduction trigger (sec. 4283)	Repealed.
Environmental Excise Taxes	
1. Excise taxes for Hazardous Substance Superfund (secs. 4611, 4661, 4671)	Current tax rates (see II.E.1.) extended generally from Dec. 31, 1991–Dec. 31, 1995.
2. Fuels taxes for Leaking Underground Storage Tank Trust Fund (secs. 4081(a)(2)(B)(ii), 4041(d), 4091, 4042)	Tax of 0.1 cent per gallon reimposed, effective Dec. 1, 1990–Dec. 31, 1995.
3. Excise tax on ozone-depleting chemicals (sec. 4681)	List of taxed chemicals expanded to add carbon tetrachloride, methyl chloroform, CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216 and CFC–217. For these newly taxed chemicals, the base tax rate is $1.37 per pound for 1991 and 1992, $1.67 per pound for 1993, $3.00 per pound for 1994, $3.10 per pound for 1995, with additional increases of $0.45 per pound each year thereafter.

Item	Excise Tax Change
Communications (Telephone) Excise Tax	
Local and toll telephone and teletypewriter service (sec. 4251)	3 percent tax made permanent.
Gas Guzzler Excise Tax (sec. 4064)	Tax rates doubled, and all limousines made subject to the tax. (See II.G., for specific tax rates.)
Harbor Maintenance Excise Tax	
Tax on use of harbors (ports) (sec. 4461)	Tax increased from 0.04 percent to 0.125 percent of value of commercial cargo.
Aquatic Resources Trust Fund Excise Taxes	
Gasoline and special fuels used in motorboats (secs. 4081, 4041(a)(2))	Tax increased from 9 cents per gallon to 14 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995.
Gasoline used in small-engine outdoor power equipment (nonbusiness use) (secs. 4081 and 9503 (c)(5)	Tax increased from 9 cents per gallon to 14 cents per gallon, effective Dec. 1, 1990–Sept. 30, 1995. (See footnote 35, for dedicated purposes of such revenues in the Sport Fish Restoration Account.)

Item	Excise Tax Change
Luxury Excise Taxes	
1. Passenger vehicles (sec. 4001)	New tax imposed of 10 percent of retail price in excess of $30,000, effective Jan. 1, 1991–Dec. 31, 1999.
2. Boats (sec. 4002)	New tax imposed of 10 percent of retail price in excess of $100,000, effective Jan. 1, 1991–Dec. 31, 1999.
3. Aircraft (sec. 4003)	New tax imposed of 10 percent of retail price in excess of $250,000, effective Jan. 1, 1991–Dec. 31, 1999.
4. Jewelry (sec. 4006)	New tax imposed of 10 percent of retail price in excess of $10,000, effective Jan. 1, 1991–Dec. 31, 1999.
5. Furs (sec. 4007)	New tax imposed of 10 percent of retail price in excess of $10,000, effective Jan. 1, 1991–Dec. 31, 1999.
Excise Tax on Reversions of Qualified Plan Assets to Employers	
1. In general (sec. 4980(a))	Tax increased from 15 percent to 20 percent of the amount of employer reversion from a qualified plan, effective generally for reversions after Sept. 30, 1990 (with certain exceptions).
2. Additional tax if no replacement plan (sec. 4980(d))	Tax is 50 percent if the employer does not maintain a qualified replacement plan or provide certain pro-rata benefit increases.

TABLE 2.—SCHEDULE OF PRESENT FEDERAL EXCISE TAX RATES

[AS OF JANUARY 1, 1991]

Tax (and Code section)	Tax rates
A. Alcohol Excise Taxes	
1. Alcoholic beverage taxes:	
Distilled spirits (sec. 5001)	$13.50 per proof gallon.
Wines (sec. 5041):[7]	
Not more than 14 percent alcohol	$1.07 per wine gallon.
14 to 21 percent alcohol	$1.57 per wine gallon.
21 to 24 percent alcohol [8]	$3.15 per wine gallon.
Artificially carbonated wines	$3.30 per wine gallon.
Champagne and other sparkling wines	$3.40 per wine gallon.
Beer (sec. 5051)	$18 per barrel (31 gallons) generally.[9]
2. Alcohol occupational taxes: [10]	
Producers:	
Distilled spirits and wines (sec. 5081)	$1,000 per year per premise.[11]
Brewers (sec. 5091)	$1,000 per year per premise.[11]
Wholesale dealers (sec. 5111):	
Liquors, wines, or beer	$500 per year.
Retail dealers (sec. 5121):	
Liquors, wines, or beer	$250 per year.
Nonbeverage use of distilled spirits (sec. 5131)	$500 per year.
Industrial use of distilled spirits (sec. 5276)	$250 per year.

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[7] Small domestic wineries (those having aggregate annual production not exceeding 250,000 gallons) are entitled to a credit equal to 90 cents per gallon (the amount of the wine gallon tax increase on the first 100,000 gallons of wine produced in a calendar year).

[8] Wines containing more than 24 percent alcohol are taxed as distilled spirits.

[9] $7 per barrel on the first 60,000 barrels removed each year by small domestic brewers who produce less than 2,000,000 barrels of beer during the calendar year.

[10] July 1–June 30 is the taxable year for these occupational taxes.

[11] Tax is $500 per year per premise for businesses with gross receipts of less than $500,000 in the preceding taxable year.

Tax (and Code section)	Tax rates	
	Jan. 1, 1991	Jan. 1, 1993
B. Tobacco Excise Taxes		
1. Cigars (sec. 5701(a)):		
Small cigars (weighing no more than 3 pounds per thousand)	93.75 cents per thousand.	$1.125 per thousand.
Large cigars (weighing more than 3 pounds per thousand)	10.625 percent of manufacturer's price (but not more than $25 per thousand).	12.75 percent of manufacturer's price (but not more than $30 per thousand).
2. Cigarettes (sec. 5701(b)):		
Small cigarettes (weighing no more than 3 pounds per thousand)	$10 per thousand (i.e., 20 cents per pack of 20 cigarettes)	$12 per thousand (i.e., 24 cents per pack of 20 cigarettes).
Large cigarettes (weighing more than 3 pounds per thousand)[12]	$21 per thousand	$25.20 per thousand.

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[12] Large cigarettes (measuring more than 6½ inches in length) are taxed at the rate prescribed for small cigarettes, counting each 2¾ inches (or fraction) as one cigarette.

Tax (and Code section)	Tax rates	
	Jan. 1, 1991	Jan. 1, 1993
3. Cigarette paper and tubes:		
Cigarette paper (sec. 5701(c))[13]	0.625 cent per 50 papers.	0.75 cent per 50 papers.
Cigarette tubes (sec. 5701(d))[14]	1.25 cents per 50 tubes.	1.5 cents per 50 tubes.
4. Snuff, chewing tobacco, pipe tobacco:		
Snuff (sec. 5701(e)(1))	30 cents per pound	36 cents per pound.
Chewing tobacco (sec. 5701(e)(2))	10 cents per pound	12 cents per pound.
Pipe tobacco (sec. 5701(f))	56.25 cents per pound.	67.5 cents per pound.
5. Tobacco occupational tax:		
Manufacturers or exporters of taxable tobacco products (sec. 5731)	$1,000 per year per premise[15]	Same.

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[13] Cigarette papers measuring more than 6½ inches in length are taxed at the rate prescribed, counting each 2¾ inches (or fraction) as one cigarette paper. Tax does not apply to a book or set of cigarette papers containing 25 or fewer papers.

[14] Cigarette tubes measuring more than 6½ inches in length are taxed at the rate prescribed, counting each 2¾ inches (or fraction) as one cigarette tube.

[15] Tax is $500 per year per premise for businesses with gross receipts of less than $500,000 in the preceding taxable year.

Tax (and Code section)	Tax rates
C. Highway and Rail Excise Taxes (sec. 9503)[16]	
1. Motor fuels (highway and rail): * [17] [18]	
Gasoline (sec. 4081)	14 cents/gallon.
Diesel fuel (secs. 4041(a)(1), 4091)	20 cents/gallon generally.[19]
Special motor fuels (incl. alcohol fuels from petroleum) (sec. 4041(a)(2))	14 cents/gallon.
Methanol and ethanol fuels:[20]	
Methanol fuels from other than petroleum or natural gas (sec. 4041(b)(2))	8 cents/gallon (i.e., a 6 cents/gallon exemption).
Ethanol fuels from other than petroleum or natural gas (sec. 4041(b)(2))	8.6 cents/gallon (i.e., a 5.4 cents/gallon exemption).
Fuels from natural gas (sec. 4041(m))	7 cents/gallon (i.e., a 7 cents/gallon exemption).

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* See also E.2., "Taxes for Leaking Underground Storage Tank Trust Fund," for additional tax of 0.1 cent per gallon (0.05 cent per gallon for methanol and ethanol fuels) on motor fuels (through 1995).

[16] The highway and rail excise taxes and exemptions are scheduled to expire after September 30, 1995. Sec. 9503 refers to the Highway Trust Fund portion of the highway excise taxes.

[17] Revenues equivalent to 2.5 cents/gallon of the taxes on highway motor fuels are retained in the General Fund; the balance of the highway motor fuels tax revenues is transferred to the Highway Trust Fund. Revenues from the 2.5 cents/gallon tax on rail fuels goes to the General Fund. (See also J.2., for transfers of motorboat fuels tax revenues.)

[18] The 1990 Act transfers revenues from the tax on gasoline used in small-engine outdoor power equipment to the Sport Fishing Restoration Account of the Aquatic Resources Trust Fund for wetlands restoration purposes. (See J.2., below.)

[19] A net Highway Trust Fund tax of 3 cents per gallon (17 cents/gal. refund or credit) applies to certain privately operated, scheduled intercity buses (sec. 6427(b)).

There is a one-time rebate (credit or refund) to the original purchaser of a qualified diesel-powered car, truck, or van having a gross vehicle weight rating of 10,000 pounds or less. The rebate varies with the model year (only available for post-1978 models) and type of vehicle (higher rebate for a truck or van than for a car). The credit applies to such vehicles owned as of January 1, 1985, or originally purchased after January 1, 1985 and before January 1, 1995 (sec. 6427(g)).

[20] Alcohol fuels the content of which is at least 85 percent of methanol, ethanol, or other alcohol.

Tax (and Code section)	Tax rates
1. Motor fuels * (cont.):	
Gasohol (sec. 4081(c)):	
From ethanol	9.56 cents/gallon (i.e., a 4.44 cents/gallon exemption for 10% or more alcohol-gasoline blend).
From other than ethanol	8.89 cents/gallon (i.e., a 5.11 cents/gallon exemption for 10% or more alcohol gasoline blend).
Diesohol (secs. 4041(k)(1), 4091(c))	14.6 cents/gallon (i.e., a 5.4 cents/gallon exemption for 10% or more alcohol-diesel blend).
Rail fuels (secs. 4091, 4093(c)	2.5 cents/gallon.
2. Trucks and trailers:	
Trucks (over 33,000 lbs.) and trailers (over 26,000 lbs.) (sec. 4051) [21]	12 percent of retail price.

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* See also E.2., "Taxes for Leaking Underground Storage Tank Trust Fund," for additional tax of 0.1 cent per gallon (0.05 cent per gallon for methanol and ethanol fuels) on motor fuels (through 1995).

[21] Includes tractors of the kind chiefly used for highway transportation with a trailer or semitrailer.

Tax (and Code section)	Tax rates
3. Tires for highway vehicles (sec. 4071)	40 pounds or less—no tax. 40–70 pounds—15 cents/pound over 40 pounds. 70–90 pounds—$4.50, plus 30 cents/pound over 70 pounds. Over 90 pounds—$10.50, plus 50 cents/pound over 90 pounds.
4. Use tax on heavy highway vehicles (sec. 4481)[22]	Under 55,000 pounds—no tax. 55,000–75,000 pounds—$100 plus $22 per 1,000 pounds over 55,000. Over 75,000 pounds—$550.
D. Airport and Airway Excise Taxes (sec. 9502)[23]	
1. Air passenger ticket tax (sec. 4261)	10 percent of amount paid.
2. International departure tax (sec. 4261(c))	$6 per person.
3. Domestic air cargo tax (sec. 4271)	6.25 percent of amount paid.
4. Fuels taxes for noncommercial aviation:*	
Gasoline (secs. 4081 and 4041(c))	15 cents per gallon.
Nongasoline (jet) (secs. 4041(c) and 4091)	17.5 cents per gallon.
Nongasoline in alcohol mixture made from ethanol (sec. 4091(d))	4.56 cents per gallon.
Nongasoline in alcohol mixture not made from ethanol (sec. 4091(e))	3.89 cents per gallon.

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* See also E.2., "Taxes for Leaking Underground Storage Tank Trust Fund," for additional tax of 0.1 cent per gallon on motor fuels (through 1995).

[22] Annual tax: the taxable period is July 1–June 30. Tax liability is incurred as of the first month the vehicle is used during the taxable period (prorated).

The use tax is reduced by 25 percent for vehicles (1) used exclusively in transporting harvested forest products to and from the forested site and which are required to be registered for that purpose, or (2) registered in Canada or Mexico.

There is an exemption for vehicles used fewer than 5,000 miles on public highways during the taxable period (7,500 miles for farm vehicles), and for certain local transit buses.

[23] The airport and airway taxes are scheduled to expire after December 31, 1995. Under the Omnibus Budget Reconciliation Act of 1990 (H. Rept 101-964), the conference agreement provided that the revenues from the ***increase*** in aviation excise tax rates would go into the General Fund through 1992, and to the Airport and Airway Trust Fund for 1993–1995. However, due to a statutory drafting omission, only the increase in the noncommercial aviation fuels taxes actually now goes to the General Fund. A technical correction is needed to have the increased revenues from the air passenger and air cargo taxes go into the General Fund before 1993. Sec. 9502 refers to the Trust Fund statute.

Tax (and Code section)	Tax rates
E. Environmental Excise Taxes	
1. Excise taxes for Hazardous Substance Superfund (sec. 9507):[24]	
Crude oil tax (sec. 4611)	9.7 cents per barrel for domestic crude oil and imported petroleum products.
Tax on feedstock chemicals (sec. 4661)	Tax ranges from $0.22 to $4.87 per ton generally. (See Table 4 for specific tax rates for chemicals.)[25]
Tax on certain imported substances (sec. 4671)[26]	Generally taxed at the rates applicable to taxable chemicals under sec. 4661 used as materials in the manufacture of the imported substance. If importer does not furnish adequate information to Treasury to determine tax rate, the rate is 5 percent of the value of such imported substance on which a tax is imposed under sec. 4611 or sec. 4661. (See Table 5 for initial list of taxable substances.)

[24] The Superfund also receives revenues from the environmental tax on corporations (sec. 59A), equal to 0.12 percent of the modified alternative minimum taxable income of the corporation in excess of $2,000,000. This tax applies generally to taxable years beginning after December 31, 1986, and before January 1, 1996 (with an earlier termination as determined below when the Superfund reaches certain levels of unobligated balance or total tax receipts).

The Superfund excise taxes are scheduled to expire after December 31, 1995, or earlier if (1) the Superfund unobligated balance exceeds $3,500 million at the end of 1993 or 1994, ***and*** if the unobligated balance is estimated to exceed this amount at the end of the following year if no Superfund taxes were to be imposed during such year, or (2) when total Superfund tax revenues exceed $11,970 million (including the sec. 59A tax revenues).

[25] For periods before 1992, the tax on xylene is $10.13 per ton, instead of $4.87.

[26] The excise tax on certain imported substances has the same expiration schedule as for the other Superfund taxes.

The Secretary of the Treasury is required to add any substance to the list if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight or value of the materials used to produce such substance (determined on the basis of the predominant method of production); the Secretary may remove only those substances which meet neither test.

Tax (and Code section)	Tax rates
2. Taxes for Leaking Underground Storage Tank Trust Fund (sec. 9508):[27]	
Gasoline (sec. 4081(a)(2)(B)(ii))	0.1 cent per gallon (including aviation use).
Other motor fuels (secs. 4041(d) and 4091)	0.1 cent per gallon (including fuels used in motor vehicles, motorboats, trains, or aviation, but excluding liquid petroleum gas).
Methanol and ethanol fuels (sec. 4041(b)(3) [28]	0.05 cent per gallon.
Fuels used in inland waterways (sec. 4042)	0.1 cent per gallon.
3. Tax for Oil Spill Liability Trust Fund (sec. 9509):	
Crude oil (sec. 4611(c) (2)(B) and sec. 4611(f))	5 cents per barrel.[29]

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[27] These taxes are scheduled to expire after December 31, 1995. (See also C.1., for highway and rail taxes on motor fuels; D.4., for airport and airway taxes on noncommercial aviation fuel; I., for tax on fuels used on inland waterways; and J., for tax on motor boat fuels.)

[28] Alcohol fuels the content of which is at least 85 percent methanol, ethanol, or other alcohol.

[29] This tax is effective for the period, January 1, 1990–December 31, 1994. However, if the unobligated balance of the Oil Spill Liability Trust Fund exceeds $1 billion at the end of a quarter, the tax rate will be zero (not apply) for the following quarter(s). If the unobligated balance of the Trust Fund subsequently is less than $1 billion, the tax rate will be reimposed at 5 cents per barrel beginning the quarter commencing 90 days after the date of the close of the quarter for which the calculation was made.

Tax (and Code section)	Tax rates	
4. Tax on ozone-depleting chemicals (sec. 4681):		
	Year	Base tax rate (per pound)
In general The tax is determined as the product of a base tax rate and the specific chemical's [30] "ozone depleting factor."	Initially listed chemicals	
	1991	$1.37
	1992	$1.67
	1993	$2.65
	1994 [31]	$2.65
There are two schedules of base tax rates: one applicable to "initially listed chemicals" and one applicable to "newly listed chemicals". (Newly listed chemicals were added in the 1990 Act, effective on January 1, 1991).	Newly listed chemicals	
	1991	$1.37
	1992	$1.37
	1993	$1.67
	1994	$3.00
	1995 [32]	$3.10
	Chemical	Ozone depleting factor
	Initially listed chemicals	
	CFC–11	1.0
	CFC–12	1.0
	CFC–113	0.8
	CFC–114	1.0
	CFC–115	0.6
	Halon–1211	3.0
	Halon–1301	10.0
	Halon–2402	6.0
	Newly listed chemicals	
	Carbon tetrachloride	1.1
	Methyl chloroform	0.1
	CFC–13	1.0
	CFC–111	1.0
	CFC–112	1.0
	CFC–211	1.0
	CFC–212	1.0
	CFC–213	1.0
	CFC–214	1.0
	CFC–215	1.0
	CFC–216	1.0
	CFC–217	1.0

4. Tax on ozone-depleting chemicals (cont.):

Reduced rate of tax

For certain chemicals, the tax for 1991–1993 is the product of the base tax rate times the ozone depleting factor times the "applicable percentage."[33]

Chemical	Applicable percentage— 1991	1992	1993
Halon–1211	6.0	5.0	3.3
Halon–1301	1.8	1.5	1.0
Halon–2402	3.0	2.5	1.6
Chemicals used in rigid foam insulation	18.0	15.0	10.0

F. Communications (Telephone) Excise Tax

Local and toll (long-distance) telephone and teletypewriter services (sec. 4251) .... 3 percent of amount paid.

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[30] Recycled ozone-depleting chemicals and certain exported chemicals are exempt from tax.

[31] For years after 1994, the base tax rate is increased by $.45 per pound per year.

[32] For years after 1995, the base tax rate is increased by $.45 per pound per year.

[33] For 1994 and thereafter, the reduced rates no longer apply (i.e., the regular rates apply).

Tax (and Code section)	Tax rates
G. Gas Guzzler Excise Tax (sec. 4064)	
	Tax per vehicle
Fuel economy rating (in miles per gallon):	
At least 22.5	0
At least 21.5 but less than 22.5	$1,000
At least 20.5 but less than 21.5	1,300
At least 19.5 but less than 20.5	1,700
At least 18.5 but less than 19.5	2,100
At least 17.5 but less than 18.5	2,600
At least 16.5 but less than 17.5	3,000
At least 15.5 but less than 16.5	3,700
At least 14.5 but less than 15.5	4,500
At least 13.5 but less than 14.5	5,400
At least 12.5 but less than 13.5	6,400
Less than 12.5	7,700
H. Harbor Maintenance Trust Fund Excise Tax (sec. 9505)	
Tax on use of harbors (ports) (sec. 4461)	0.125 percent of value of commercial cargo loaded or unloaded at U.S. ports; exceptions for cargo donated for overseas use and for cargo (other than cargo destined for a foreign country) shipped between U.S. mainland and Alaska (except for crude oil), Hawaii, and/or U.S. possessions, as well as cargo shipped between Alaska, Hawaii, and/or U.S. possessions.
I. Inland Waterways Trust Fund Excise Tax (sec. 9506)	
Tax on diesel and other liquid fuels used by commercial cargo vessels on specified inland or intracoastal waterways (sec. 4042)*	
1991	13 cents per gallon.
1992	15 cents per gallon.
1993	17 cents per gallon.
1994	19 cents per gallon.
1995 and thereafter	20 cents per gallon.

* See also E.2., "Taxes for Leaking Underground Storage Tank Trust Fund," for additional tax of 0.1 cent per gallon (0.05 cent per gallon for methanol and ethanol fuels) on such fuel, through 1995.

Tax (and Code section)	Tax rates
J. Aquatic Resources Trust Fund Excise Taxes (sec. 9504)	
1. Boating Safety Account taxes:	
Gasoline and special fuels used in motorboats (secs. 4081 and 4041(a)(2))*	14 cents per gallon (through Sept. 30, 1995); transfer of motorboat fuel tax receipts to the Account limited to $70 million per year for fiscal year 1990 and thereafter.[34]
2. Sport Fish Restoration Account taxes:	
Gasoline and special fuels used in motorboats (secs. 4081 and 4041(a)(2))*	14 cents per gallon (through Sept. 30, 1995); the balance of motorboat fuel tax receipts in excess of the amounts indicated in J.1., above, and footnote 34 (sec. 9503(c)(4)(C)).
Gasoline used in small-engine outdoor power equipment (nonbusiness use) (secs. 4081 and 9503(c)(5))*	14 cents per gallon (through Sept. 30, 1995).[35]
Sport fishing equipment (sec. 4161(a))	10 percent of manufacturer's price; except 3 percent for electric outboard motors and certain fish finders (tax on fish finders limited to $30 per item).

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*See also E.2., "Taxes for Leaking Underground Storage Tank Trust Fund," for additional tax of 0.1 cent per gallon (0.05 cent per gallon for methanol and ethanol fuels) on such fuel, through 1995.

[34] Sec. 9503(c)(4)(A). Also, $1 million per fiscal year of these motorboat fuel tax revenues goes to the Land and Water Conservation Fund (sec. 9503(c)(4)(B)).

[35] Such revenues are transferred from the Highway Trust Fund, and are dedicated to carry out purposes of any law that are substantially identical to the Coastal Wetlands Planning, Protection and Restoration Act (S. 3252, 101st Congress, as introduced).

Tax (and Code section)	Tax rates
K. Bows and Arrows and Firearms Excise Taxes	
1. Bows and arrows (sec. 4161(b))[36]	11 percent of manufacturer's price.[37]
2. Regular firearms and ammunition (sec. 4181):[36, 38]	
Pistols and revolvers	10 percent of manufacturer's price.
Firearms other than pistols and revolvers	11 percent of manufacturer's price.
Ammunition (shells and cartridges)	11 percent of manufacturer's price.
3. "Non-regular" firearms:[39]	
Occupational taxes (sec. 5801):[40]	
Importers and manufacturers	$1,000 per year per premise.[41]
Dealers	$500 per year per premise.
Transfer taxes (sec. 5811):	
Generally	$200 per transfer.
Certain concealable weapons (see sec. 5845(e))	$5 per transfer.
Making tax (sec. 5821)	$200 per firearm.

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[36] Revenues from these taxes (secs. 4161(b) and 4181) are appropriated, in the fiscal year following receipt, to the Federal Aid to Wildlife Program for support of State wildlife programs.

[37] The tax is imposed on bows having a draw weight of 10 pounds or more.

[38] There are annual Federal licensing fees for manufacturers, importers and dealers in regular firearms under the Gun Control Act of 1968 (18 U.S.C. 923).

[39] Firearms not listed above in K.2., i.e., machine guns, "destructive devices" (e.g., explosive devices such as bombs, grenades, small rockets, mines, etc.), sawed-off shotguns or rifles, silencers, and certain concealable weapons.

[40] July 1–June 30 is the taxable year for the occupational taxes. There are also annual Federal licensing fees for manufacturers, importers and dealers in destructive devices or ammunition for destructive devices (18 U.S.C. 923).

[41] Tax is $500 per year per premise for a business with gross receipts of less than $500,000 for a preceding taxable year.

Tax (and Code section)	Tax rates
L. Luxury Excise Taxes [42]	
1. Passenger vehicles (sec. 4001) [43]	10 percent of retail price in excess of $30,000.
2. Boats (sec. 4002) [44]	10 percent of retail price in excess of $100,000.
3. Aircraft (sec. 4003) [45]	10 percent of retail price in excess of $250,000.
4. Jewelry (sec. 4006) [46]	10 percent of retail price in excess of $10,000.
5. Furs (sec. 4007) [47]	10 percent of retail price in excess of $10,000.
M. Black Lung Disability Trust Fund Excise Taxes (sec. 9501)	
1. Coal excise tax (sec. 4121)	$1.10 per ton for coal from underground mines and 55 cents per ton for coal from surface mines (but no more than 4.4 percent of the coal's selling price).[48]
2. Excise taxes on black lung benefit trusts (secs. 4951, 4952, and 4953)	Varying rates on certain activities. (See "Penalty" excise taxes, P.4.c., below.)

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[42] Special rules apply in computing the tax on imported items, leases of items, and parts and accessories for passenger vehicles, boats, and aircraft. In addition, passenger vehicles, boats, and aircraft sold to the Federal Government or a State or local government for use exclusively in police, fire fighting, or similar activities, are generally exempt from tax.

[43] The tax applies generally to passenger vehicles of 6,000 pounds or less "unloaded gross vehicle weight" except that (a) "gross vehicle weight" applies for a truck or van and (b) the weight rule does not apply to limousines. The tax does not apply to a passenger vehicle sold for use exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

[44] The tax does not apply to any boat sold for use exclusively in the active conduct of (a) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or (b) any other trade or business unless the boat is to be used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement, or recreation.

[45] The tax does not apply to an aircraft if 80 percent or more of the use is in any trade or business. The tax also does not apply to an aircraft for use exclusively in (a) the aerial application of fertilizers or other substances, (b) helicopter operations described in section 4261(e) (1) or (2), (c) a trade or business of providing flight training, or (d) a trade or business of transporting persons or property for compensation or hire.

[46] Includes watches.

[47] The tax applies to (a) articles made of fur on the hide or pelt, and (b) articles of which fur is a major component.

[48] Tax does not apply to lignite. On the earlier of January 1, 2014, or any January 1 after 1981 on which there is no balance of repayable advances to the Trust Fund and no unpaid interest on such advance, the tax rates are scheduled to return to the pre-1982 rates (i.e., 50 cents/ton for underground mines, and 25 cents/ton for surface mines, limited to 2 percent of the price).

Tax (and Code section)	Tax rates

N. Vaccine Injury Compensation Trust Fund Excise Tax (sec. 9510)

	Vaccine[49]	Tax rate (per dose)
Excise tax on certain vaccines (sec. 4131)[50]	DPT[51]	$4.56
	DT[52]	0.06
	MMR[53]	4.44
	Polio	0.29

O. Excise Tax on Private Foundation Net Investment Income

Tax (and Code section)	Tax rates
1. Domestic foundations (sec. 4940):	
General rule	2 percent of net investment income.[54]
Tax where charitable payout increases by equivalent amount	1 percent of net investment income.
2. Foreign foundations (sec. 4948)	4 percent of gross investment income from sources within U.S.

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[49] Combinations of vaccines are taxed at the sum of the combined rates for each taxable vaccine.

[50] Tax is to be terminated after December 31, 1992, or earlier if tax collections exceed projected Trust Fund liability.

[51] Diphtheria, Pertussis, and Tetanus (any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens).

[52] Diphtheria or Tetanus (other than a DPT vaccine).

[53] Measles, Mumps, or Rubella (vaccine against any one or combination of two or more of these).

[54] Certain operating foundations having public involvement and not governed or run by disqualified persons are exempt from the 2-percent tax.

Tax (and Code section)	Tax rates
P. Miscellaneous Excise Taxes	
1. Excise tax on foreign insurance policies (sec. 4371)	(a) Casualty insurance and indemnity bonds.—4 cents per dollar of premium paid. (b) Life insurance, sickness and accident policies, and annuity contracts.—1 cent per dollar premium paid. (c) Reinsurance.—1 cent per premium paid for reinsurance under (a) or (b).
2. Wagering excise taxes:	
Certain wagers (sec. 4401)	2 percent of amount of wager, except that tax is 0.25 percent in States where wagering is authorized by State law.
Occupational tax (sec. 4411)	$500 per year on person engaged or employed in business of accepting wagers (taxable period is July–June), except that tax is $50 per year in States where wagering is authorized by State law.
3. Excise tax on ship passengers international departures (sec. 4471)	$3 per passenger on a covered voyage.[55]

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[55] A "covered voyage" includes (1) a commercial passenger vessel which extends over one or more nights, or (2) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the U.S. (i.e., more than 3 miles from shore) during which the passengers embark or disembark the vessel in the U.S. The tax does not apply to a voyage on any vessel owned or operated by the United States or a State or any agency or subdivision, nor does it apply to a voyage of less than 12 hours between two U.S. ports. A passenger vessel is any vessel having a berth or stateroom accommodations for more than 16 passengers.

Tax (and Code section)	Tax rates
4. "Penalty" excise taxes:	
a. Lobbying expenditures:	
Public charities making an election under sec. 501(h) (sec. 4911)	Tax of 25 percent of excess lobbying expenditures.
Charitable organizations disqualified from tax-exempt status because of lobbying expenditures (sec. 4912)	Tax of 5 percent of lobbying expenditures on the organization; 5-percent tax also on the manager.
b. Private foundation activities:	
Self-dealing (sec. 4941)	Initial tax.—5 percent of the amount of self-dealing on the self-dealer; 2½ percent on foundation manager (up to $10,000). Additional tax.—If the self-dealing is not corrected within the correction period, there is a tax of 200 percent of the amount on the self-dealer; also, a tax of 50 percent on a foundation manager (up to $10,000).
Failure to distribute income (sec. 4942)	Initial tax.—15-percent tax on the foundation on the amount remaining undistributed at the beginning of the second (or succeeding) taxable year. Additional tax.—If not corrected, there is an additional tax of 100 percent of the amount not distributed at the end of the correction period.

Tax (and Code section)	Tax rates
4. "Penalty" excise taxes (Cont.)	
Excess business holdings (sec. 4943)	Initial tax.—5-percent tax on the foundation on the value of the excess holdings.
	Additional tax.—If not corrected, there is an additional tax of 200 percent of the excess holdings at the end of a specified period.
Investments which jeopardize charitable purpose (sec. 4944)	Initial taxes.—5-percent tax on the foundation on the amount of such investment; also a 5-percent tax on the foundation manager (up to $5,000).
	Additional taxes.—25-percent tax on foundation if the investment is not removed from jeopardy within the correction period; also, a 5-percent tax is imposed on the foundation manager (up to $10,000).
Taxable expenditures (sec. 4945)	Initial taxes.—10-percent tax on the foundation on the amount of the taxable expenditure; also, a 2½-percent tax on the foundation manager (up to $5,000).
	Additional taxes.—If not corrected, there is a tax of 100 percent on the foundation on the taxable expenditure; also, a tax of 50 percent on the foundation manager (up to $10,000).

Tax (and Code section)	Tax rates
4. "Penalty" excise taxes (Cont.)	
c. Black lung benefit trusts:	
Self-dealing (sec. 4951)	Initial taxes.—10-percent tax on the self-dealer on the amount of self-dealing; 2½-percent tax on trustee. Additional taxes.—If not corrected, a tax of 100 percent is imposed on self-dealer; 50-percent tax on trustee.
Taxable expenditures (sec. 4952)	Initial taxes.—10-percent tax on the trust on the amount of the taxable expenditure; 2½-percent tax on trustee. Additional taxes—If not corrected, a tax of 100 percent is imposed on the fund; 50-percent tax on trustee.
Excess contributions to benefit trust (sec. 4953)	5-percent tax on the contributor on excess contributions to the trust.
d. Political expenditures of sec. 501(c)(3) organizations (sec. 4955)	Initial taxes.—10-percent of political expenditure on the organization; 2½-percent tax on the manager. Additional taxes.—If not corrected, a tax of 100 percent of the political expenditure is imposed on the organization; 50-percent tax on the manager.

Tax (and Code section)	Tax rates
4. "Penalty" excise taxes (Cont.)	
e. Qualified pension, etc., plans:	
Failure to meet minimum funding standards (sec. 4971)	Initial tax.—Tax of 10 percent (5 percent in the case of a multi-employer plan) of accumulated funding deficiency is imposed on employer. Additional tax.—If not corrected, a tax of 100 percent of the deficiency is imposed on employer.
Nondeductible contributions to qualified employer plan (sec. 4972)	Tax of 10 percent on nondeductible contributions under the plan.
Excess contributions to IRAs, etc. (sec. 4973)	Tax of 6 percent of excess contributions to the plan is imposed on individual.
Certain accumulations in IRAs, etc. (sec. 4974)	50-percent tax on payee of the amount by which the minimum required to be distributed during the year exceeds the amount actually distributed during the year.
Prohibited transaction (sec. 4975)	Initial tax.—Tax of 5 percent of the amount involved in the prohibited transaction is imposed on the disqualified person. Additional tax.—If not corrected, a tax of 100 percent of the amount involved is imposed on the disqualified person.

Tax (and Code section)	Tax rates
4. "Penalty" excise taxes (Cont.)	
Disqualified welfare benefits (sec. 4976)	Tax of 100 percent of the disqualified benefit amount.
Excess fringe benefits provided by an employer (sec. 4977)	Tax of 30 percent of the "excess fringe benefits."
Dispositions of section 1042 securities by employee stock ownership plans and worker-owned cooperatives (sec. 4978)	Tax of 10 percent of the amount realized on disposition.
Dispositions of section 2057 securities by employee stock ownership plans and worker-owned cooperatives (sec. 4978A)	Tax of 30 percent of the amount realized on disposition or the amount repaid on certain loans.
Dispositions of section 133 securities by employee stock ownership plans (sec. 4978B)	Tax of 10 percent of the amount realized on the disposition.
Excess contributions under a cash or deferred arrangement (sec. 4979)	Tax of 10 percent of the sum of excess contributions under a cash or deferred arrangement and any excess aggregate contributions under the plan for the plan year.

Tax (and Code section)	Tax rates
4. "Penalty" excise taxes (Cont.)	
Prohibited allocations of qualified securities by employee stock ownership plans and worker-owned cooperatives (sec. 4979A)	Tax of 50 percent of amount involved in a prohibited allocation.
Reversion of qualified plan assets to employer (sec. 4980)	Tax of 20 percent of the amount of employer reversion from a qualified plan generally; 50 percent tax if employer does not maintain a qualified replacement plan or provide certain pro-rata benefit increases.
Excess distributions from qualified retirement plans (sec. 4980A)	Tax of 15 percent of excess distributions with respect to an individual during calendar year.
Violations of health care continuation rules (sec. 4980B)	Tax of $100 per day, up to a specified maximum, per failure to comply with the health care continuation rules.
f. Real estate investment trusts (sec. 4981A)	Tax of 4 percent of the excess of required distribution for calendar year over the distributed amount (i.e., on the undistributed income).
g. Regulated investment trusts (sec. 4982)	Tax of 4 percent of the excess of required distribution for calendar year over the distributed amount (i.e., on the undistributed income).

Tax (and Code section)	Tax rates
4. "Penalty" excise taxes (Cont.)	
h. Excise tax on issuer of "registration-required obligation" not in registered form (sec. 4701)	Tax of 1 percent of the principal amount of the "registration-required obligation" (defined in sec. 163(f) multiplied by the number of years (or portions) of the obligation.
i. Excise tax on "golden parachute" excess payments (sec. 4999)	Tax of 20 percent of the "excess payment" (defined in sec. 280G(b)).
j. Excise tax on large group health plans (sec. 5000)	Tax of 25 percent of expenses of a "nonconforming large group health plan" (defined under sec. 1862(b)(4)(A)(i) of the Social Security Act).
k. Excise tax on "green-mail" (sec. 5881)	Tax of 50 percent of the gain realized from "greenmail" (any consideration transferred by a corporation to acquire its stock if (1) such stock has been held by the sharholder for less than 2 years, (2) the shareholder (or any related person or person acting in concert) made or threatened a public tender offer for stock during that period, and (3) such acquisition is pursuant to an offer which was not made on the same terms to all shareholders).

TABLE 3.—FEDERAL EXCISE TAX RECEIPTS, FISCAL YEARS 1990–1992 [1]

[In millions of dollars]

Tax	1990 actual	1991 estimate	1992 estimate
A. Alcohol Taxes			
Distilled spirits	3,807	4,177	4,324
Wines	267	1,408	1,894
Beer	1,680	1,909	2,012
Alcohol occupational taxes	131	131	131
Refunds (mostly distilled spirits)	−190	−188	−185
Total alcohol taxes	5,695	7,437	8,176
B. Tobacco Taxes			
Cigars	40	40	35
Cigarettes	4,014	4,556	4,718
Cigarette papers, tubes	2	2	2
Smokeless tobacco (snuff, chewing tobacco)	24	24	24
Pipe tobacco	8	8	8
Tobacco occupational tax	(*)	(*)	(*)
Refunds	−7	−7	−7
Total tobacco taxes	4,081	4,623	4,780
C. Highway and Rail Taxes			
Highway Trust Fund taxes			
Gasoline	9,371	11,778	12,234
Diesel fuel used on highways	3,240	3,631	3,822
Trucks and trailers	1,112	1,049	1,379
Tires for highway vehicles	255	315	328
Highway vehicle use tax	584	580	598
Refunds (mostly fuels taxes)	−701	−540	−589
Total Highway Trust Fund taxes	13,861	16,813	17,772
General Fund motor fuels taxes [2]			
Gasoline		2,100	2,776
Highway diesel fuel		321	467
Rail diesel fuel		65	84
Refunds		−44	−98
Total General Fund motor fuels taxes		2,442	3,229

TABLE 3.—FEDERAL EXCISE TAX RECEIPTS, FISCAL YEARS 1990–1992 [1]—Continued

[In millions of dollars]

Tax	1990 actual	1991 estimate	1992 estimate
D. Airport and Airway Taxes			
Airport and Airway Trust Fund taxes			
Air passenger ticket tax [3]	3,219	4,359	4,932
International departure tax	178	254	273
Domestic air cargo tax [3]	181	236	262
Aviation fuels taxes (net of refunds)	122	115	118
Total Airport/Airway Trust Fund taxes	3,700	4,964	5,585
General Fund aviation taxes [2]			
Aviation fuels taxes (net of refunds)		26	32
E. Environmental Excise Taxes			
Excise taxes for Hazardous Substance Superfund	818	816	815
Fuels taxes for Leaking Underground Storage Tank Trust Fund	122	109	149
Tax for Oil Spill Liability Trust Fund	143	243	240
Tax on ozone-depleting chemicals	360	1,250	1,136
Refunds: Post-closure liability tax	−1	−12	
Total environmental excise taxes	1,442	2,406	2,340
F. Communications (Telephone) Tax	2,995	3,251	3,174
G. Gas Guzzler Tax	90	175	198
H. Harbor Maintenance Trust Fund Tax [4]	210	527	651
I. Inland Waterways Trust Fund Tax	63	60	70
J. Aquatic Resources Trust Fund Taxes			
Boat motor fuel tax	112	138	151
Sport fish equipment tax	77	80	84
Tax on gasoline used in small engines [5]		41	50
Total Aquatic Trust Fund taxes	189	259	285
K. Bows and Arrows and Firearms Taxes			
Bows and arrows	13	14	15
Pistols and revolvers	41	44	46
Firearms (regular), shells, cartridges	98	100	103
Other ("nonregular" firearms, occupational)	(*)	(*)	(*)
Total bows and arrows, firearms taxes	152	158	164
L. Luxury Excise Taxes [6]		252	403

Footnotes at end of table.

TABLE 3.—FEDERAL EXCISE TAX RECEIPTS, FISCAL YEARS 1990-1992 [1]—Continued

[In millions of dollars]

Tax	1990 actual	1991 estimate	1992 estimate
M. Black Lung Disability Trust Fund Taxes			
Coal excise tax	665	627	649
Taxes on black lung benefit trusts	(*)	(*)	(*)
Total Black Lung Trust Fund taxes	665	627	649
N. Vaccine Injury Compensation Trust Fund Tax	159	118	124
O. Tax on Private Foundation Net Investment Income	180	189	198
P. Miscellaneous Excise Taxes			
Foreign insurance policies	103	98	100
Less insurance tax refunds	−25	−20	−10
Wagering taxes (incl. occupational tax)	9	10	10
Tax on ship passengers international departures	5	9	11
"Penalty" excise taxes:			
Employee benefit and pension plans	200	184	184
Total misc. excise taxes	292	281	295
Addendum: Other Refunds and Unapplied Collections	1,746	789	197
Total Federal Excise Taxes	35,520	45,397	48,322
General Fund Excises	15,591	20,873	21,982
Trust Fund Excises	19,929	24,524	26,340

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* Less than $500,000.

[1] This revenue table generally follows the order for excise tax categories as in Part II of this pamphlet.

[2] General Fund portion of the respective motor fuels tax revenues as provided in the Omnibus Budget Reconciliation Act of 1990 ("1990 Act"), effective beginning on December 1, 1990.

[3] The conference agreement on the 1990 Act intended that the revenues from the increase in the air passenger ticket tax from 8% to 10% and the domestic air cargo tax from 5% to 6.25% would go into the General Fund through 1992. However, due to a technical statutory drafting omission, this was not accomplished. Thus, the budget document reports these revenues all as Trust Fund receipts.

[4] The harbor maintenance excise tax is classified as a Customs trust fund receipt in the fiscal year 1992 budget.

[5] Tax revenues transferred from the Highway Trust Fund to the Aquatic Resources Trust Fund (Sport Fish Restoration Account, to be available for wetlands environmental program), effective beginning on December 1, 1990.

[6] Tax effective beginning on January 1, 1991.

Source: Budget of the United States Government Fiscal Year 1992; Treasury Department.

TABLE 4.—EXCISE TAX RATES ON CERTAIN CHEMICALS FOR THE HAZARDOUS SUBSTANCE SUPERFUND [1]

Feedstock Chemical (Sec. 4661)	Tax per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Napthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene [2]	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadminum	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

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[1] The tax on feedstock chemicals is scheduled to expire December 31, 1995, or earlier if (1) the Superfund unobligated balance exceeds $3,500 million at the end of 1993 or 1994, and if the unobligated balance is estimated to exceed this amount at the end of the following year if no Superfund taxes were to be imposed during such year, or (2) when total Superfund tax revenues exceed $11,970 million (including the sec. 59A tax revenues).

[2] For periods before 1992, the tax rate for xylene is $10.13.

TABLE 5.—LIST OF TAXABLE SUBSTANCES UNDER THE EXCISE TAX ON CERTAIN IMPORTED SUBSTANCES (SECS. 4671–4672)

Taxable Substance [1]	Taxable Substance [1]
Cumeme	Ethylbenzene
Styrene	Methylene chloride
Ammonium nitrate	Polypropylene
Nickel oxide	Propylene glycol
Isopropyl alcohol	Formaldehyde
Ethylene glycol	Acetone
Vinyl chloride	Acrylonitrile
Polyethylene resins, total	Methanol
Polybutadiene	Propylene oxide
Styrene-butadiene, latex	Polypropylene resins
Styrene-butadiene, snpf	Ethylene oxide
Synthetic rubber, not containing fillers	Ethylene dichloride
Urea	Chylohexane
Ferronickel	Isophthalic acid
Ferrochromium nov 3 pct.	Maleic anhydride
Ferrochrome ov 3 pct. carbon	Phthalic anhydride
Unwrought nickel	Ethyl methyl ketone
Nickel waste and scrap	Chloroform
Wrought nickel rods and wire	Carbon tetrachloride
Nickel powders	Chromic acid
Phenolic resins	Hydrogen peroxide
Polyvinylchloride resins	Polystyrene homopolymer resins
Polystyrene resins and copolymers	Melamine
Ethyl alcohol for nonbeverage use	Acrylic and methacylic acid resins
	Vinyl resins
	Vinyl resins, nspf

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[1] For applicable tax, see table 2. E. 1, and relevant chemical feedstock tax rates in Table 4. Imported taxable substances generally are taxed at the rate applicable to the chemical feedstocks that are components of the taxable imported substance.

The Secretary of the Treasury is required to add any substance to the list if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight or value of the materials used to produce such substance (determined on the basis of the predominant method of production); the Secretary may remove only those substances which meet neither test.

Section 6. Trust Funds

This section describes the legislative history, current status, and workings of a number of Federal Trust Funds within the jurisdiction of the Committee on Ways and Means. Several additional trust funds not included here are described in a separate Committee document entitled, "Overview of Entitlement Programs—1991 Greenbook: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means." In part 2 of that document, the Black Lung Disability Trust Fund, and the Childhood Vaccine Compensation Trust Fund are described. Also see section 7, "Social Security Payroll Taxes," and section 8, "Unemployment Compensation Payroll Taxes," *infra.*

A. Airport and Airway Trust Fund

LEGISLATIVE HISTORY

1970 Act and 1971 Amendment

The Airport and Airway Trust Fund was established as of July 1, 1970, by the Airport and Airway Revenue Act of 1970 (Title II of the Airport and Airway Development Act of 1970, Public Law 91-258, the "1970 Act"). The 1970 Act provided that new and increased aviation user taxes were to be deposited into the Trust Fund and, with interest earned on the deposits, were to be available to meet specified airport and airway obligations of the United States incurred under Title I of the 1970 Act, as it was in effect on the date of enactment. Amounts in the Trust Fund were available for making specified expenditures, as provided in appropriations acts, until July 1, 1980.

The 1970 Act authorized Trust Fund expenditures for the maintenance and operation of air navigation facilities, qualified airport planning and construction purposes, airway facilities and equipment, research and development, safety, and related departmental administrative expenses. However, a 1971 amendment (P.L. 92-174) to Title I of the 1970 Act removed the authorization for spending Trust Fund moneys for maintenance and operation of the airway system. This amendment also limited the authority for meeting administrative costs from the Trust Fund to only such administrative expenses related to the remaining authorized purposes.

1973 Amendment

A 1973 amendment (P.L. 93-44) to Title I of the 1970 Act increased the authorization levels for airport grants for fiscal years 1974 and 1975, increased the Federal share for certain airport grants and safety and security equipment costs, and amended the definition of airport development to specifically include security equipment required under regulations of the Department of Transportation.

1976 Amendment

The Airport and Airway Development Act Amendments of 1976 (P.L. 94-353) further amended Title I of the 1970 Act to include several additional expenditure categories to be authorized from the Trust Fund. The new expenditure categories were: snow removal equipment; noise suppressing equipment; construction of physical barriers and landscaping for the purpose of reducing the effect of aircraft noise in areas adjacent to public airports; acquisition of land or property interests for airport noise control purposes; airport terminal development (the public, nonrevenue-producing areas, including baggage facilities and passenger moving equipment); and specified amounts for maintenance of airway facilities. Thus, the 1971 prohibition against authorizing airway operating and maintenance costs from the Trust Fund was partially removed by the 1976 amendment. In addition, the 1976 amendment provided authorization levels for airport grants and other existing Trust Fund expenditure programs through fiscal year 1980, and increased the Federal share for certain airport grants for fiscal years 1977 and 1978.

The Committee on Ways and Means offered a Committee amendment as Title III to the 1976 Act Amendments which amended the Trust fund language to conform it to the authorization provisions approved by the Committee on Public Works and Transportation and to permit expenditures from the Fund to be made until October 1, 1980 (instead of July 1, 1980). The Committee on Ways and Means initially declined to allow expenditures from the Trust Fund for terminal facilities; however, this expenditure purpose was approved by a separate vote of the House.

1979 Amendment

The Aviation Safety and Noise Abatement Act of 1979 (P.L. 96-193) further amended Title I of the 1970 Act to authorize Trust Fund appropriations for airport noise compatibility planning programs and airport noise compatibility grants and to increase the airport development authorization amounts for fiscal year 1980. In addition, the Act amended the Trust Fund language (section 108(f)(1)(A)) of the Airport and Airway Revenue Act of 1970 to conform to the 1979 amendments.

1980 Amendment

In 1980, Public Law 96-298 was enacted to extend the aviation excise taxes and require the deposit of the revenues from these taxes into the Trust Fund from July 1, 1980 until October 1, 1980. In 1980, the Committee on Ways and Means also reported the Airport and Airway Revenue Act of 1980 as a Committee amendment, to be offered as Title II to H.R. 6721, in order to extend aviation excise taxes and the Trust Fund until October 1, 1985. However, the bill was not considered by the House prior to the adjournment of the 96th Congress. As a result, expenditures from the Trust Fund were not authorized after September 30, 1980; further, on October 1 many of the aviation excise taxes automatically expired or were reduced, and the deposit of the remaining aviation excise tax revenues into the Trust Fund was terminated.

1981 Amendment

In 1981, the Committee on Ways and Means approved a technical and conforming amendment to the Trust Fund provisions in order to allow expenditures to be made from the Trust Fund through September 30, 1981. The Committee amendment was included in H.R. 4182, the fiscal year 1981 Airport Development Authorization Act, which was approved by the House in July 1981. The provisions of H.R. 4182 were later enacted as part of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35.

Also in 1981, the House Committee on Public Works and Transportation approved H.R. 2643 to set funding levels for airport and airway programs for fiscal years 1982 and 1983. At the adjournment of the first session of the 97th Congress, a financing title for the bill was pending in the Committee on Ways and Means.

1982 Amendment

On May 12, 1982, the Committee on Ways and Means reported H.R. 4800 as a financing title for H.R. 2643; the bill extended and reinstated various aviation excise taxes and the Airport and Airway Trust Fund for the period July 1, 1982, through December 31, 1983.

Title V of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (P.L. 97-248) contained the provisions of the Airport and Airway Improvement Act of 1982, authorizing spending from the Trust Fund for airport programs at higher levels over the period fiscal years 1982 through 1987. Aviation excise tax provisions (similar to those in H.R. 4800) were also included in title III of TEFRA to raise sufficient revenue to fund the airport and airway spending authorized in title V of the Act. The various aviation excise taxes were extended and reinstated, some at higher tax rates, for the period September 1, 1982, through December 31, 1987.

Three modifications were made in the passenger ticket tax and an exemption was provided from the fuel and ticket taxes for helicopters used in timber operations or hard mineral exploration or development where the Federal aviation system and Federal-aid airports are not utilized. The Airport and Airway Trust Fund expenditure authority was extended through fiscal year 1987 and its expenditure purposes were updated to include the changes made in title V. (Adjustments in certain of the airport and airway spending programs were subsequently made in H.R. 6211 (P.L. 97-424), and conforming cross references in the Trust Fund provisions were also included.) The Trust Fund provisions were also transferred to the Internal Revenue Code, effective September 1, 1982.

1984 Amendment

The Deficit Reduction Act of 1984 (P.L. 98-369) expanded the previous exemptions from the aircraft fuels and air transportation taxes for helicopters not using federally aided airports or Federal airway facilities to include helicopters employed in the exploration and development of oil and gas (effective on April 1, 1984).

1987 Amendment

The Airport and Airway Safety and Capacity Expansion Act of 1987 (P.L. 100–223) included a separate revenue title for the purpose of funding a 5-year Trust Fund spending authorization with extension of the aviation excise taxes. The 1987 Act extended for 3 years the existing law airport and airway-related excise taxes and exemptions (January 1, 1988 through December 31, 1990), and extended for 5 years authority to spend from the Airport and Airway Trust Fund (October 1, 1987 through September 30, 1992).

The 1987 Act provided for an automatic 50-percent reduction in air passenger ticket, cargo and fuel taxes for 1990, if Trust Fund appropriations for airport improvements, airway facilities and equipment, and research, engineering, and development for the prior 2 fiscal years totaled less than 85 percent of authorized levels. The Act also provided that emergency medical helicopters owned or leased by health care facilities which do not use the federally assisted airport and airway facilities funded by these taxes are exempt from all applicable airport and airway excise taxes.

1989 Amendment

The Omnibus Budget Reconciliation Act of 1989 (P.L. 101–239) suspended the aviation tax reduction until January 1, 1991, with the automatic 50-percent tax reduction scheduled to take effect if the applicable Trust Fund program appropriations (as set forth in the 1987 Act) were less than 85 percent of the Trust Fund authorizations for fiscal years 1989 and 1990. Also, the 1989 Act increased the international departure tax from $3 to $6 per person on January 1, 1990.

1990 Amendment

The Omnibus Budget Reconciliation Act of 1990 (Title XI of P.L. 101–508) repealed the automatic 50-percent aviation excise tax reduction trigger. The 1990 Act also increased the aviation taxes (except the international departure tax) by 25 percent, effective December 1, 1990, and extended all the taxes through 1995. Under the conference agreement on the 1990 Act, the revenue from the tax increases is to be retained in the General Fund through 1992 and thereafter deposited in the Trust Fund.[1] Title XI of the 1990 Act also amended the Trust Fund statute to permit expenditures from the Trust Fund for purposes included in the 1990 Trust Fund authorization provisions (Title IX of the 1990 Act).

Title IX of the 1990 Act provided an extension of Trust Fund program authorizations at increased levels for fiscal years 1991 and 1992, eliminated the penalty provision which reduced FAA operations and maintenance expenditures from the Trust Fund if Trust Fund capital programs were not full funded, and added contract authority from the Trust Fund for fiscal years 1992–1998 for payments under the Small Community Air Service Program ("essential air services").

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[1] However, the statutory language of the 1990 Act inadvertently omitted the retention of the increase in the air passenger and air cargo taxes; thus, a technical correction is necessary to reflect the congressional intent. (Such a correction is included in H.R. 1555 and S. 750, introduced on March 21, 1991.)

FINANCING MECHANISM

The Airport and Airway Trust Fund is financed by several aviation excise taxes. The following table sets forth the taxes and rates under present law.

TABLE 1.—SCHEDULE OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES

Tax (and code section)	Present law rate [1]
Air passenger ticket tax (sec. 4261 (a), (b) and (d)) [2] [3].	10 percent.
Domestic air cargo tax (sec. 4271)	6.25 percent.
International departure tax (sec. 4261 (c))	$6 per person.
Fuels tax for noncommercial (general) aviation (sec. 4041(c)) [3].	15 cents per gallon on gasoline; 17.5 cents per gallon on other fuels.

[1] These taxes are scheduled to expire on January 1, 1995.

[2] Air transportation between the United States and a foreign station which is not more than 225 miles from the nearest point in the continental United States, as well as between two such foreign stations, generally is subject to this tax where payment for the travel is made in the United States. The 1982 amendments permit the Secretary to waive the 225-mile zone rule if Canada or Mexico enter into a "qualified agreement". This tax does not apply to transportation between the United States and other foreign stations where payment is made outside the United States, nor does it apply to the U.S. portions of certain uninterrupted international air transportation (where the layover does not exceed 12 hours). Also, the air passenger ticket tax does not apply to the portion of flights to or from Alaska and Hawaii which are not made over the United States (Code sec. 4262).

[3] The tax does not apply to aircraft owned by a tax-exempt museum operated exclusively for the procurement, care, and exhibition of World War II aircraft (defined in sec. 4041(h)). Certain helicopters are exempt under the 1982, 1984, and 1987 amendments.

Source: Joint Committee on Taxation, "Schedule of Present Federal Excise Taxes (as of January 1, 1991)" (JCS-3-91), March 4, 1991.

The passenger ticket tax applies to air passenger transportation within the continental United States, while the $6 per passenger international departure tax applies to flights abroad beginning in the United States and to flights to and from Alaska and Hawaii and between Alaska and Hawaii. The domestic air cargo tax applies to the transportation of property by air which begins and ends in the United States. Aircraft not subject to these passenger or freight taxes are subject to the fuel taxes noted above; exemptions are provided for aviation fuels used on farms or used for farming purposes or by a State or local government or a nonprofit educational organization. Also, under the 1982, 1984, and 1987 Acts, certain helicopters are exempt from the fuels and ticket taxes if used in timber or hard mineral operations or oil and gas exploration or development or emergency medical helicopters where the Federal aviation system and Federal-aid airports are not used.

EXPENDITURE PURPOSES

The present Trust Fund statute authorizes obligations incurred under Title I of the 1970 Act, under the 1976 Act Amendments, the 1979 Act Amendments, the Fiscal Year 1981 Authorization Act, the Airport and Airway Improvement Act of 1982, or the Airport and Airway Safety and Capacity Expansion Act of 1987, as such Acts were in effect on the date of enactment of the 1987 Act, or under the Airport Noise and Capacity Act of 1990, the Aviation Safety and Capacity Expansion Act of 1990, and the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990, as such Acts were in effect on November 5, 1990.

The Airport and Airway Trust Fund expenditure programs authorized under present law are generally as follows:

1. *Airport Improvement Program (AIP)*—

(a) *Airport planning*—Planning for airport systems for airport master plans; also, airport noise compatibility planning for air carrier airports eligible for terminal development costs.

(b) *Airport construction*—Construction, improvement or repair of a public airport (includes removal of airport hazards and construction of physical barriers and landscaping to diminish noise).

(c) *Airport terminal facilities*—Nonrevenue producing public-use areas which are directly related to movement of passengers and baggage at certificated air carrier airports having required safety and security equipment (include baggage facilities and passenger-moving equipment); does not include costs of construction of public parking facility for passenger automobiles or costs of construction, alteration, or repair of a hanger or any airport building unless used to house facilities or activities directly related to safety of persons at the airport. These facilities include multimodal terminal development and bond requirement for certain airports.

(d) *Land acquisition*—Includes land or property interests for airport noise control purposes.

(e) *Airport-related equipment*—Airport security equipment required by DOT regulations, snow removal equipment, noise suppressing equipment, navigation aids, and safety equipment required for airport certification.

(f) *Airport noise compatibility programs*—Includes soundproofing of public buildings; local governmental units are eligible for project grants as well as airports.

2. *Facilities and Equipment Program (F&E)*—Costs of acquiring, establishing, and improving air navigation facilities.

3. *Research, Engineering, Development, and Demonstration Program (R&D)*—Projects in connection with FAA research and development activities.

4. *Operations and Maintenance Programs (O&M)*—Flight check and maintenance of air navigation facilities; services provided under international agreements relating to the U.S share of joint provision of air navigation services.

5. *Small Community Air Service Program.*—Contract authority for fiscal years 1992–1998 for payments to ensure that eligible localities receiving airline service at the time of deregulation continue to have airline service.

MISCELLANEOUS

The Secretary of the Treasury is required to report to the Congress each year on the financial condition of the Trust Fund.

The House Committee on Public Works and Transportation has jurisdiction over airport and airway development and improvement programs.

The statutory provisions establishing the Airport and Airway Trust Fund and governing its operations are located at section 9502 of the Internal Revenue Code.

FINANCIAL STATUS OF TRUST FUND

Table 2 is based on the Department of the Treasury's Annual reports on the Airport and Airway Trust Fund and the Appendix to the U.S. Budget for fiscal years 1979–1991, and it sets forth the Fund's receipts and outlays for fiscal years 1971–1991.

TABLE 2.—STATUS OF AIRPORT AND AIRWAY TRUST FUND, FISCAL YEARS 1971–1992

[In millions of dollars]

Fiscal year	Receipts				Outlays	Cash balance in the fund [2]
	Excise taxes, net	Interest on investments	Other [1]	Total		
1971	563		621	1,184	287	897
1972	649		902	1,551	1,389	1,058
1973	758		69	828	699	1,187
1974	840	28		868	521	1,534
1975	962	96		1,058	579	2,013
1976	938	146		1,084	547	2,550
T.Q	277	1		278	92	2,736
1977	1,191	194		1,384	853	3,268
1978	1,326	219		1,545	1,115	3,698
1979	1,526	282		1,809	1,114	4,392
1980	1,874	400		2,274	1,224	5,442
1981	21	561		582	1,306	4,719
1982	133	542		674	1,512	3,882
1983	2,165	533		2,698	1,792	4,787
1984	2,499	546		3,045	1,392	6,441
1985	2,852	746		3,598	2,613	7,426
1986	2,735	829		3,564	2,365	8,625
1987	3,060	880		3,940	2,631	9,935
1988	3,195	893		4,088	2,896	11,120
1989	3,664	1,009		4,674	2,856	12,938
1990	3,700	1,245		4,945	3,528	14,355
1991 (estimate)	4,964	1,331		6,296	5,371	15,279
1992 (estimate)	5,584	1,337		6,922	5,765	16,436

[1] Amounts appropriated from the general fund and unexpended balances of certain general fund accounts transferred to the Trust Fund.

[2] Large portions of the unexpended balance are committed to liquidate outstanding unfunded obligations (contract authority) and to liquidate unexpended appropriations. Also, funds equivalent to cumulative shortfalls below minimum annual obligation levels must be reserved for future expenditure.

Source: Budgets of the U.S. Government, numerous fiscal years.

Table 2 also contains cash balances in the Trust Fund at the end of each fiscal year since 1971. However, it must be noted that large portions of the unexpended balance are committed to liquidate outstanding unfunded obligations and unexpended appropriations. Table 3 sets forth the balances remaining in the Fund after these commitments have been taken into account, called the uncommitted balances, for fiscal years 1977–1991.

TABLE 3.—AIRPORT AND AIRWAY TRUST FUND UNCOMMITTED BALANCES, FISCAL YEARS 1977–1992

Uncommitted balance end of fiscal year	Millions of dollars
1977	1,709
1978	2,182
1979	2,742
1980	3,686
1981	3,021
1982	2,156
1983	1,882
1984	2,234
1985	2,039
1986	4,312
1987	5,559
1988	5,841
1989	6,870
1990	7,446
1991 (estimate)	7,776
1992 (estimate)	7,673

Source: The U.S. Budget for Fiscal Year 1992.

B. Highway Trust Fund

LEGISLATIVE HISTORY

Development of the Trust Fund and Highway Tax Revenue Sources

The Highway Trust Fund was established in the Highway Revenue Act of 1956 for a 16-year period to provide a specific source of financing for the new Interstate System and continuation of other Federal-aid highway programs. The other highway programs previously had been financed through the general fund. The 1956 legislation increased certain highway user taxes, primarily the taxes on motor fuels (from 2 cents a gallon to 3 cents a gallon), and imposed a new highway user tax on heavy highway motor vehicles. Initially, the Trust Fund was financed by the proceeds of the following highway user excise taxes: manufacturers' taxes on gasoline for highway use, and tires, tubes, and tread rubber for highway use; a portion of the manufacturers' tax on trucks and buses (20 percent for 1957 and 50 percent thereafter, until changed to 100 percent by 1961 legislation); the tax on use of heavy highway motor vehicles; and the retailers' tax on diesel and special motor fuels for highway use.[1]

Section 209(b) of the Highway Revenue Act of 1956 included a declaration of congressional policy that (1) if it appears that the total receipts of the Trust Fund will be less than the total expenditures from the Trust fund, or (2) if it appears that the distribution of the tax burden among the various classes of highway users or other beneficiaries of the highways is not equitable, then Congress is to enact legislation to bring about a balance of total Trust Fund receipts and expenditures or to make an equitable distribution of the tax burden. In addition, the 1956 Act provided for a 3-year highway cost allocation study (later extended for 2 additional years) to determine the fair distribution of highway-related user taxes among the various users.

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[1] The Airport and Airway Revenue Act of 1970 created the Airport and Airway Trust Fund and deposited into it the manufacturers' and retailers' taxes on aviation gasoline, the manufacturers' taxes on tires and tubes of the types used on aircraft, and the retailers' taxes on aviation fuel, as well as the taxes on transportation of persons and property by air and on use of civil aircraft.

The Land and Water Conservation Act of 1965 created the Land and Water Conservation Fund and required that the taxes on special fuels and gasoline used as motorboat fuel be transferred to that fund from the Highway Trust Fund. In addition, P.L. 96–451 authorized transfers up to $20 million per year for fiscal years 1981–1983 of revenues from the motorboat fuel taxes to the National Recreational Boating Safety and Facilities Improvement Fund. This amount was increased to $45 million per year for fiscal years 1983–1988 in the Highway Revenue Act of 1982. The Deficit Reduction Act of 1984 made the fund a separate account (Boating Safety Account) within the Aquatic Resources Trust Fund. The 1984 Act increased the limit to $60 million through fiscal year 1990 and $70 million for fiscal years 1991–1993. The 1984 Act also provides for a transfer of up to $1 million per year of motorboat fuels tax revenues to the Land and Water Conservation Fund. The Omnibus Budget Reconciliation Act of 1990 provides for transfer of small-engine fuel (gasoline) tax revenues from the Highway Trust Fund to the Sport Fish Restoration Account in the Aquatic Resources Trust Fund. Small-engine fuel (gasoline) taxes are the amounts attributable to the Highway Trust Fund financing rate paid by non-business users of small-engine outdoor power equipment. Such revenues are to be dedicated to carry out purposes of any law substantially identical to the Coastal Wetlands Planning, Protection and Restoration Act (S. 3252, 101st Cong., as introduced). The 1990 Act also extended the $70 million per year transfer through fiscal year 1995.

The manufacturers' excise taxes on lubricating oil for highway use and truck and bus parts were transferred into the Trust Fund as the result of 1966 legislation.

The Revenue Act of 1971 repealed the tax on trucks and buses with gross vehicle weight of 10,000 pounds or less.

The Energy Act of 1978 repealed the manufacturers' tax on buses as well as the excise taxes on bus parts, tires and tubes, tread rubber and lubricating oil.

Section 209(g) of the Highway Revenue Act of 1956 also contained a provision—the "Byrd Amendment"—to prevent the Trust Fund from reaching a deficit position. In general, this provision required that if Trust Fund balances and estimated future receipts would be inadequate to cover obligations as they become due, a reduction of the Interstate System authorization in an amount sufficient to eliminate the difference would be required.

In 1959, the tax on motor fuels was temporarily increased for 1960 and 1961 from 3 cents a gallon to 4 cents a gallon in order to finance the authorized level of Trust Fund spending. The 4-cent rate was then extended in 1961 for the life of the Trust Fund (June 30, 1972, at that time). The 1961 legislation also increased the tax rates on tires, tubes and tread rubber, doubled the tax on heavy trucks, and transferred the entire 10-percent excise tax on trucks and buses to the Trust Fund (previously, only one-half of this tax went into the Trust Fund).[2] In addition, the 1961 Act extended the Highway Trust Fund for 3 months, from June 30, 1972, to September 30, 1972, again to provide additional revenues to meet projected highway program costs.

Highway legislation in 1966 also transferred the revenues from the existing manufacturers' excise taxes on lubricating oil and truck and bus parts to the Highway Trust Fund. Thus, with respect to the highway-related excise taxes, only the tax on automobiles did not go into the Trust Fund. (The 7-percent excise tax on automobiles was later repealed by the Revenue Act of 1971.)

Subsequent Extensions of Highway Trust Fund

The Highway Trust Fund and the related highway user taxes have been extended together four times since 1961, as well as a fifth extension of the highway excise taxes in 1990: a 5-year extension in the Federal-Aid Highway Act of 1970 (from September 30, 1972, through September 30, 1977), a 2-year extension in the Federal-Aid Highway Act of 1976 (through September 30, 1979), a 5-year extension in the Surface Transportation Assistance Act of 1978 (through September 30, 1984), a 4-year extension in the Surface Transportation Assistance Act of 1982 (through September 30, 1988), and a 5-year extension in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (through September 30, 1993). The 1970, 1976, and 1978 extensions were added by the Committee on Ways and Means as a separate title to a highway authorization bill of the Committee on Public Works and Transportation and generally involved only the extensions of existing highway user excise taxes and tax rates. (See reference to 1982 Act below.) The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) increased the highway excise taxes and extended the taxes through September 30, 1995 (see below), but did not extend the Trust Fund expenditure authority (currently, September 30, 1993).

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[2] The 1961 Act also repealed a scheduled transfer to the Trust Fund of one-half the 10-percent excise tax on automobiles.

Surface Transportation Assistance Act of 1978

In the 1978 Act, the operation of the "Byrd Amendment" was modified to require that when anticipated revenues are insufficient to cover expenditures, reductions will be made on a pro rata basis to all apportioned highway funds, rather than to interstate apportionments only. In addition, an exemption from the fuels taxes was provided for fuels used by qualified taxicabs, until the end of 1980 (later extended as a 4-cents-per-gallon exemption until October 1, 1985 and further extended through September 30, 1988 by the Tax Reform Act of 1986). Finally, two studies were required: (1) a cost allocation study was required to be conducted by the Department of Transportation, with a final report to Congress by January 15, 1982; and (2) a study of the highway excise tax structure was required to be conducted by the Department of Treasury, with a final report to Congress by April 15, 1982.[3]

Highway Revenue Act of 1982

The highway user tax and Trust Fund provisions were substantially revised in the Surface Transportation Assistance Act of 1982 (H.R. 6211), Public Law 97-424. Titles I and II of the Act contained authorizations for highway programs at higher levels for four fiscal years, 1983 through 1986. Title V, the Highway Revenue Act of 1982, extended and revised the highway user taxes and the Trust Fund for an additional 4 years, through September 30, 1988.

In revising and extending the Highway Trust Fund, its provisions were codified in the Internal Revenue Code (section 9503), effective January 1, 1983. Eligible Trust Fund expenditure purposes were revised to include spending authorized under the 1982 Act. Further, the anti-deficit provision ("Byrd Amendment") was revised to reduce apportionments when unfunded authorizations exceed estimated receipts for the following 24-month period. Trust Fund estimates are required quarterly.

The 1982 Act increased the taxes on gasoline, diesel fuel, and special motor fuels from 4 cents per gallon to 9 cents per gallon, effective April 1, 1983.

The 1982 Act also increased the amount of revenue (from the motorboat fuels taxes) that can be transferred to the Boating Safety Fund from $20 million to $45 million per year. This fund was also extended through fiscal year 1988.

The 1982 Act established a new Mass Transit Account, within the Highway Trust Fund, financed from the revenue equivalent of 1 cent of the 9 cents per gallon tax on fuels. Amounts in the Mass Transit Account are available for making capital expenditures authorized under section 21(a)(2) of the Urban Mass Transportation Act. An anti-deficit provision, similar to that described above for the Highway Trust Fund, also is to be applied except that unfunded authorizations may not exceed estimated receipts for the following 12 months.

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[3] The 1978 amendments were contained in Title V, the Highway Revenue Act of 1978, of the 1978 Surface Transportation Assistance Act (P.L. 95-599). The highway cost allocation study was submitted in May 1982 and the highway excise tax structure study was submitted in December 1982.

Deficit Reduction Act of 1984

The Deficit Reduction Act of 1984 (P.L. 98-369) revised several of the specific taxes imposed under the 1982 Act, including an increase in the tax on diesel fuel from 9 cents per gallon to 15 cents per gallon and a revised annual use tax on heavy highway vehicles. These modifications are noted in the footnotes to table 1.

Surface Transportation and Uniform Relocation Assistance Act of 1987

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (P.L. 100-17) extended highway-related excise taxes and exemptions through September 30, 1993, and also extended the authority to spend from the Highway Trust Fund through September 30, 1993.

Omnibus Budget Reconciliation Act of 1990

The Omnibus Budget Reconciliation Act of 1990 made several major changes to the Highway Trust Fund and motor fuels taxes. The Act increased highway and motorboat fuels taxes by 5 cents per gallon. One-half of the increase goes to the Highway Trust Fund; the remaining one-half is retained in the General Fund. Thus, for gasoline the Highway Trust Fund financing rate is 11.5 cents and the deficit reduction rate is 2.5 cents. (The Act also imposed a 2.5 cents per gallon tax on fuel used in rail transportation, the entire amount of which is included in the General Fund.) The excise tax exemption for gasohol made from ethanol was reduced to 5.4 cents from 6 cents. Subject to these modifications, the Act extended the highway-related excise taxes and exemptions through September 30, 1995. The partial exemptions for alcohol fuels were extended through September 30, 2000.

The Act was also intended to increase compliance with gasoline tax collection procedures. The point of imposition of the tax and penalties for failure to pay were clarified and strengthened. As well, the Act imposed additional registration and reporting requirements for those involved in the sale and storage of gasoline located in a terminal.

FINANCING MECHANISM

Highway Excise Taxes

The highway excise taxes deposited into the Highway Trust Fund, as revised under the 1982, 1984, 1987, and 1990 Acts, and in effect through September 30, 1995, are set forth in the following table. Special effective dates are set forth in the footnotes. Table 1 does not include the additional 2.5 cents per gallon fuels taxes which are deposited into general revenues.

TABLE 1.—SCHEDULE OF HIGHWAY TRUST FUND EXCISE TAX RATES

Tax	Present rate*
Gasoline (sec. 4080)	11.5 cents per gallon.[1]
Diesel fuel (secs. 4041(a)(1), 4091)	17.5 cents per gallon.[2]
Special motor fuels (sec. 4041(a)(2))	11.5 cents per gallon.[1]
Methanol and ethanol fuels: [3] [4]	
Methanol fuels from other than petroleum or natural gas (sec. 4041(b)(2)).	5.5 cents per gallon.
Ethanol fuels from other than petroleum or natural gas (sec. 4041(b)(2)).	6.1 cents per gallon.
Fuels from natural gas (sec. 4041(m))	5.75 cents per gallon.
Gasohol (sec. 4081(c)):	
From ethanol	6.78 cents per gallon.
From other than ethanol	6.11 cents per gallon.
Diesohol (secs. 4041(k)(1), 4091(c))	12.1 cents per gallon.
Heavy trucks and trailers (sec. 4051)	12 percent of retail sale price.[5]
Truck tires (sec. 4071)	Graduated rates on highway tires of 40 pounds or more; no tax on other tires.[6]
Annual use tax on heavy trucks (sec. 4481)	55,000 pounds and over—$100 plus $22 per 1,000 pounds in excess of 55,000 pounds (maximum $550).[7]

* These excise taxes are scheduled to expire on October 1, 1995.

[1] The 1990 Act increased the tax from 9 cents per gallon to a total of 14 cents per gallon (including 2.5 cents per gallon General Fund), effective December 1, 1990.

[2] The 1990 Act increased the tax from 15 cents per gallon to a total of 20 cents per gallon (including 2.5 cents per gallon General Fund), effective December 1, 1990. Owners of vehicles with a gross vehicle weight of 10,000 pounds or less are allowed an advanced rebate equal to an average estimated extra tax (above 9 cents per gallon) to be paid over the life of the vehicle.

[3] Alcohol fuels the content of which is at least 85 percent of methanol, ethanol or other alcohol.

[4] The additional 0.1 cent per gallon tax imposed under section 4041(d) for the Leaking Underground Storage Tank Trust Fund is 0.05 cents per gallon for such methanol and ethanol fuel.

[5] Under the 1982 Act, this tax does not apply to trucks under 33,000 pounds or trailers under 26,000 pounds, effective January 7, 1983. Roadrailer trailers are exempt from the tax under the 1982 Act. The tax was reduced to 6 percent in the case of piggyback trailers and semitrailers sold from July 18, 1984, through July 17, 1985. The rate increase on trucks and trailers subject to the tax and the shift from the prior manufacturer's tax to the retail level was effective April 1, 1983.

[6] Effective Jan. 1, 1984, the 1982 Act repealed the taxes on inner tubes, tread rubber, and all tires other than highway tires weighing over 40 pounds. The tax on these highway tires is 15 cents per pound in excess of 40 pounds for tires between 40 and 70 pounds; $4.50 plus 30 cents per pound on the excess from 70 to 90 pounds; and $10.50 plus 50 cents per pound on the excess over 90 pounds.

[7] Effective July 1, 1984. The 1982 Act would have converted the tax to a graduated rate schedule based on taxable gross weight. However, the 1984 Act reduced the heavy vehicle use tax and increased the diesel fuel tax. The tax rate is reduced by 25 percent for logging vehicles that are used exclusively to haul harvested forested products to and from the forested site and are required to be registered for that purpose. An exemption is provided for vehicles which are used on the highways for 5,000 miles or less during the year. The exemption is increased to 7,500 miles for State-registered agricultural vehicles which haul farm commodities to or from the farm. The tax is prorated where vehicles are destroyed or stolen during the year. The tax is also prorated when the vehicles is initially placed in service after the first month of the taxable year.

Source: Joint Committee on Taxation, "Schedule of Present Federal Excise Taxes (as of January 1, 1991)" (JCS-3-91), March 4, 1991.

Exemptions From Tax

Under present law, exemptions from the fuels taxes are provided for fuel used on a farm or for farming purposes, and fuel used in intercity, local or school buses. An exemption of 4 cents per gallon of the tax on fuel used by qualified taxicabs was provided through September 30, 1988.[4] The 1982 Act provided a full exemption for off-highway business use and for certain alcohol fuels. The exemption for gasohol was increased from 4 cents to 5 cents per gallon under the 1982 Act, and to 6 cents per gallon under the 1984 Act; the exemption for ethanol fuels was reduced to 5.4 cents per gallon under the 1990 Act, effective from December 1, 1990, through September 30, 2000. In addition, buses are exempt from the 12-percent tax on trucks and trailers, and intercity, local and school buses are exempt from the tax on tires and the prior taxes on tubes, and tread rubber.[5] General exemptions are provided from these excise taxes for State and local governments and tax-exempt educational organizations. A 5.4 cents per gallon exemption from the excise tax on special motor fuels is provided through 1995 for neat ethanol fuels (6.0 cents per gallon exemption for neat methanol) which are not derived from petroleum or natural gas.[6] A 5.75-cents-per-gallon highway exemption is provided if the fuels are derived from natural gas. Neat alcohol fuels are at least 85 percent methanol, ethanol and other alcohol. All exemptions (except those for alcohol fuels) will terminate when the taxes expire on September 30, 1995. The exemptions for alcohol fuels (other than those produced from natural gas) will expire after September 30, 2000.

EXPENDITURE PURPOSES

Highway-Related Programs

The statutory provisions governing expenditures from the Highway Trust Fund were revised in the 1982 Act to provide that amounts in the Trust Fund are to be available through September 30, 1993, as provided in appropriation acts, for meeting obligations incurred which are authorized by law to be paid out of the Trust Fund under the Highway Revenue Act of 1956, under Title I or II of the Surface Transportation Assistance Act of 1982, the Surface Transportation and Uniform Relocation Act of 1987, or thereafter, amounts for a general purpose authorized under these Acts as in effect on the date of enactment of the 1987 Act. The 1982 Act established a separate Highway Account in the Trust Fund.

The highway-related excise tax revenues, except for the 1.5 cents per gallon from the taxes on highway motor fuels for the Mass Transit Account (see below), are deposited in the Highway Account of the Trust Fund. As a result, the Trust Fund expenditure purposes for the Highway Account include the following highway-related programs:

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[4] Under the 1982 Act, the fuel tax exemption for qualified taxicabs was extended from December 31, 1982 through September 30, 1984, and certain taxicabs were made eligible for the exemption for 1983 only (e.g., taxicabs prevented by local law from offering ridesharing). The 1984 Act extended the exemption through September 30, 1985. The Tax Reform Act of 1986 extended the exemption through September 30, 1988.

[5] These exemptions for buses were adopted in the Energy Act of 1978 (P.L. 95–618) and extended in the 1982 Act. As noted earlier, the taxes on inner tubes and tread rubber were repealed effected January 1, 1984.

[6] The Tax Reform Act of 1986 reduced the prior 9-cents-per-gallon exemption to 6 cents per gallon effective for sales or use after December 31, 1986.

- —Federal-aid highways, including the interstate system, primary and secondary systems, urban systems, forest and public lands highways, scenic highways, overseas highways, etc.;
- —Interstate resurfacing and repair;
- —Bridge replacement;
- —Highway safety research and development;
- —Highway-related safety grants;
- —Traffic control demonstration grants;
- —Traffic control signal demonstration projects;
- —Intermodal urban demonstration projects and mass transit grants;
- —Carpool and vanpool grants;
- —National Highway Traffic Safety Administration (NHTSA) for a share of traffic safety programs;
- —Certain administrative costs of FHWA and NHTSA; and
- —University transportation research centers.

Mass Transit Account

The 1982 Act also established a new Mass Transit Account within the Highway Trust Fund, consisting of the revenue equivalent to 1 cent per gallon of the tax on highway motor fuels and interest earnings on amounts in the account. The 1990 Act provided that an additional 0.5 cent per gallon revenue equivalent (highway use) is to be deposited in the Mass Transit Account. Amounts are available through September 30, 1993, as provided in appropriation acts, for making capital expenditures under section 21(a)(2) of the Urban Mass Transportation Act of 1964 (including new projects).

Transfers to the Land and Water Conservation Fund and the Aquatic Resources Trust Fund

Revenues equivalent to 11.5-cents-per-gallon of the 14-cents-per-gallon tax on fuels used in motorboats are transferred to these two funds through fiscal year 1995: up to $70 million per year (through fiscal year 1995) is to be transferred to the Boating Safety Account of the Aquatic Resources Trust Fund so long as the fund balance does not exceed $70 million. Any excess motorboat fuels tax revenues (other than $1 million per fiscal year to the Land and Water Conservation Fund (see part I of this section)) and small-engine fuel (gasoline) taxes are transferred to the Sport Fish Restoration Account of the Aquatic Resources Trust Fund (see part C of this section).

MISCELLANEOUS

The Secretary of the Treasury is required to report to the Congress each year on the financial condition of the Highway Trust Fund.

The House Committee on Public Works and Transportation has jurisdiction over the highway and mass transit spending programs.

The statutory provisions establishing the Trust Fund and governing its operations are located at section 9503 of the Internal Revenue Code.

FINANCIAL STATUS OF TRUST FUND

Table 2 shows the current status of the Highway Trust Fund. The table is based on the Budget of the U.S. Government for Fiscal Year 1992.

STATUS OF HIGHWAY TRUST FUND, FISCAL YEARS 1990–1992

[In thousands of dollars]

	1990	1991 estimate	1992 estimate
Unexpended balances, start of year	16,608,341	16,783,913	19,493,107
Cash income:			
Receipts	13,867,328	16,817,000	17,776,000
Interest on investments	1,562,391	1,489,600	1,632,500
Total annual income	15,429,719	18,306,600	19,408,500
(Mass transit account)	(1,976,570)	(2,367,002)	(2,613,423)
Cash outlays:			
Federal Highway Administration	14,192,394	14,224,096	16,013,922
National Highway Traffic Safety Administration	171,368	165,851	232,895
Urban Mass Transportation Administration	878,953	1,134,808	1,553,674
Other	11,432	72,651	38,952
Total	15,254,147	15,597,406	16,839,433
Balance of fund, end of year	16,783,913	19,493,107	22,062,164
Commitment against unexpended balances	(37,073,539)	(37,211,902)	(39,840,018)
Uncommitted balance, end of year	(20,289,626)	(17,718,795)	(17,777,854)

Source: U.S. Budget, Fiscal Year 1992.

C. Aquatic Resources Trust Fund

LEGISLATIVE HISTORY

Current Law

1984 Act.—The Deficit Reduction Act of 1984 (P.L. 98-369) established a new trust fund, the Aquatic Resources Trust Fund by combining and expanding the prior Federal fish restoration and management projects and the prior National Recreation Boating Safety and Facilities Improvement Fund into a single Trust Fund. The Trust Fund consists of two accounts: the Sport Fish Restoration Account and the Boating Safety Account.

1990 Act.—The Omnibus Budget Reconciliation Act of 1990 extended the transfer of motorboat fuels tax revenues to the Aquatic Resources Trust Fund through fiscal year 1995. The 1990 Act also establishes a wetlands restoration program within the Sport Fish Restoration Account, to be financed from gasoline fuels tax revenues from small-engine motor equipment (see below).

Prior Law

Fish restoration

The Act of August 9, 1950 (commonly referred to as the Dingell-Johnson Act), provided for cooperation between the Federal Government and State fish and game departments. Although the Act did not establish a trust fund, appropriations were linked to specific tax revenues. Limits were placed on State expenditures of federally-appropriated funds until the State had passed laws governing the conservation of fish and the State met other requirements.

Boating safety

1980 Act.—The National Recreational Boating Safety and Facilities Improvement Fund was enacted on October 14, 1980 (P.L. 96-451). Before this time, all funds attributable to the excise taxes on motorboat use of gasoline and other motor fuels were transferred periodically from the Highway Trust Fund into the Land and Water Conservation Fund. The 1980 Act provided financing for the Boating Fund for fiscal years 1981 through 1983.

1982 Act.—The Highway Revenue Act of 1982 (title V of the Surface Transportation Assistance Act of 1982; Public Law 97-424) extended the Boating Fund through fiscal year 1988, and increased the amounts to be transferred into the Fund.

1987 Act.—The Surface Transportation and Uniform Relocation Assistance Act of 1987 extended the Boating Fund through fiscal year 1993.

FINANCING MECHANISM

Amounts equivalent to the following revenues are appropriated into the Aquatic Resources Trust Fund:

(1) Revenues from the excise tax on sport fishing equipment, electric outboard motors and sonar devices suitable for finding fish under Internal Revenue Code section 4161;

(2) Revenues equivalent to 11.5-cents-per-gallon of the 14-cents-per-gallon excise tax on gasoline and special motor fuels in motorboats (other than $1 million of those revenue which continue to be transferred to the Land and Water Conservation Fund) and on small engines; and

(3) Import duties imposed on fishing equipment and on yachts and pleasure craft.

The revenues from the motorboat fuels excise tax described above is allocated first to the Land and Water Conservation Fund (up to $1 million annually) and second to the Boating Safety Account (up to a maximum of $70 million for each fiscal year through 1995). In addition, the maximum amount permitted to be held by the account at any time cannot exceed $70 million.

All the remaining revenues described above are allocated to the Sport Fish Restoration Account.

OBRA 1990 established the wetlands restoration program within the Sport Fish Restoration Account of the Aquatic Resources Trust Fund and provided an alternative method of funding the program. Under the 1990 Act, amounts equivalent to the revenue from taxes imposed on gasoline used in small-engine outdoor power equipment are to be transferred from the Highway Trust Fund to the Sport Fish Restoration Account of the Aquatic Resources Trust Fund, to be used to carry out purposes that are substantially identical to those of the Coastal Wetlands Planning, Protection and Restoration Act, as set forth in S. 3252 as introduced on October 26, 1990. In the "Statement of Managers" on the 1990 Act, the conferees expressed the intent that small-engine outdoor power equipment include equipment powered by engines having less than 40 horsepower—such as riding and walk-behind rotary mowers, chainsaws, snowblowers, tillers, line trimmers and edgers, log splitters, leaf blowers, lawn vacuums, and leaf shredders and branch grinders.

EXPENDITURE PURPOSES

Sport Fish Restoration Account [1]

Moneys in the account may be expended, subject to appropriation acts,[2] for the purpose of restoring and managing all species of fish that have material value in connection with sport or recreation in the marine and/or fresh waters of the United States, including:

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[1] In addition to these general expenditure purposes for the Sport Fish Restoration Account, the 1990 Act provides for the transfer of motor fuels (gasoline) tax revenues to this account, to be available to carry out purposes of any law enacted substantially identical to the Coastal Wetlands Planning, Protection and Restoration Act (S. 3252, 101st Cong., as introduced).

[2] The permanent appropriations provision under the Act of August 31, 1951, is retained by the 1984 Act and governs expenditures from the Sport Fish Restoration Account, as successor to the sport fish restoration program of prior law.

(1) Such research into problems of fish management and culture as may be necessary for efficient administration of fish resources;

(2) Acquisition of such information as necessary to guide and direct the regulation of fishing by law, including the extent of the fish population, the drain on the fish supply from fishing and/or natural causes, the necessity of legal regulation of fishing, and the effects of any measures of regulation that are applied;

(3) Formulation and adaption of plans for restocking waters with food and game fish according to natural areas or districts to which such plans are applicable, together with the acquisition of such facts as are necessary to the formulation, execution, and testing of such plans;

(4) Selection and improvement of areas of water or land adaptable as hatching, feeding, or breeding places for fish, including acquisition by purchase, condemnation, lease, or gift of such areas as are suitable therefore, and the construction thereon of such improvements, as may be necessary to make them available for these purposes.

(5) Acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to ensure safe use of such facilities) that create, or add to, public access to the waters of the United States for boating purposes;

(6) Aquatic resources education programs for increasing public understanding of the Nation's water resources and associated aquatic life forms; and

(7) Subject to a percentage limitation contained in the 1984 Act, for administration of the sport fish restoration program by the Secretary of the Interior.

Moneys in the Account remain available until spent.

Boating Safety Account

Moneys in the Boating Safety Account may be expended, subject to appropriation Acts, as follows:

(1) Two-thirds of the amount allocated to the Account in any fiscal year for State boating safety programs (i.e., up to $46.67 million for fiscal years, 1991–1995); and

(2) One-third of the amount allocated to the Account in any fiscal year for the operating expenses account of the Coast Guard (including the Coast Guard Auxiliary) to defray the cost of services provided by it for recreational boating safety (i.e., up to $23.33 million for fiscal years 1991–1995).

The State boating safety programs purposes eligible for funding from the account are:

(1) Providing facilities, equipment, and supplies for boating safety education and law enforcement, including purchase, operation, maintenance, and repair;

(2) Training personnel in skills related to boating safety and to the enforcement of boating safety laws and regulations;

(3) Providing public boating safety education, including education programs and lectures, to the boating community and the public school system;

(4) Acquiring, constructing, or repairing public access sites used primarily by recreational boaters;

(5) Conducting boating safety inspections and accident investigations;

(6) Establishing and maintaining facilities for emergency or search-and-rescue assistance; and

(7) Establishing and maintaining waterway markers and other appropriate aids to navigation.

Moneys in the Account will be available, subject to appropriations Acts, for expenditure by the Secretary of Transportation pursuant to that Secretary's contract authority, and will remain available until spent.

MISCELLANEOUS

Statutory language relating to sport fish restoration is located at 16 U.S.C. 777 and following. Statutory language relating to boat safety is located at 46 U.S.C. 2102 and 13101 and following. The Aquatic Resources Trust Fund is established by section 9504 of the Internal Revenue Code.

Jurisdiction over program aspects of the Aquatic Resources Trust Fund is in the House Committee on Merchant Marine and Fisheries.

FINANCIAL STATUS OF THE TRUST FUND

The table below describes amounts in the Aquatic Resources Trust Fund that are available for appropriation.

AQUATIC RESOURCES TRUST FUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990	1991 estimate	1992 estimate
Unappropriated balance, start of year (par value)	494,380	457,214	493,611
Unrealized discount on securities	(2,163)	(2,000)	(2,000)
Subtotal	492,217	455,214	491,611
Collections (receipts):			
Excise taxes and duties	218,171	288,000	315,000
Interest [1]	....	....	....
Total available for appropriation	218,171	288,000	315,000
Appropriations:			
National Park Service (Department of the Interior): Land and Water Conservation Fund (motorboat fuels tax)	(1,000)	(1,000)	(1,000)
U.S. Coast Guard (Department of Transportation) motorboat fuels tax	(59,820)	(70,000)	(70,000)
U.S. Fish and Wildlife Service (Department of the Interior): Sport fish restoration account	(190,191)	(193,603)	(235,921)
Total appropriations	(251,011)	(264,603)	(308,921)
Unappropriated balance, end of year	455,214	491,611	493,690

[1] The U.S. Budget for fiscal year 1992 does not mention interest income from investments.

Source: U.S. Budget, Fiscal Year 1992.

D. Harbor Maintenance Trust Fund

Legislative History

The Harbor Maintenance Trust Fund was established in the Harbor Maintenance Revenue Act of 1986 (Title XIV of the Water Resources Development Act of 1986, Public Law 99-662, the "1986 Act"), effective April 1, 1987.

Financing Mechanism

The 1986 Act imposed a new excise tax on the use of a U.S. harbor or channel ("port") by a commercial vessel for loading or unloading of commercial cargo, effective on April 1, 1987. The tax rate originally was set at 0.04 percent (4 cents per $100) of the value of the cargo. The Omnibus Budget Reconciliation Act of 1990 raised the rate to 0.125 percent (section 4461 of the Internal Revenue Code), effective on January 1, 1991. The tax also applies to ship passengers, other than certain ferryboat passengers. The tax does not apply generally to cargo shipped between the U.S. mainland and Alaska, Hawaii, or a U.S. possession. The tax is administered and enforced by the U.S. Customs Service.

The Trust Fund receives amounts equivalent to revenues from the harbor maintenance tax and revenues from the U.S. portion of Saint Lawrence Seaway tolls. In addition, the Trust Fund earns interest on investments of any cash balance.

Expenditure Purposes

Amounts in the Trust Fund are available, as provided by appropriations Act, for making expenditures for:

(1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for the fiscal year;

(2) not more than 40 percent of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States;

(3) payments of rebates of tolls or charges of the U.S. portion of the Saint Lawrence Seaway to payors; and

(4) payment of all expenses of administration incurred by the Treasury Department in administering the harbor maintenance tax, not to exceed $5 million per fiscal year (if the customs user fee does not apply).

Miscellaneous

The statutory language establishing the Trust Fund is located in section 9505 of the Internal Revenue Code.

Jurisdiction over program aspects of the Harbor Maintenance Trust Fund is in the House Committees on Public Works and Transportation, Interior and Insular Affairs, and Merchant Marine and Fisheries.

Financial Status of Fund

The table below describes amounts in the Harbor Maintenance Trust Fund that are available for appropriation.

HARBOR MAINTENANCE TRUST FUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990	1991 estimate	1992 estimate
Unappropriated balance, start of year	12,221	30,047	54,866
Receipts:			
Tax revenues	180,493	497,000	621,410
St. Lawrence Seaway tolls	8,849	10,300	10,440
Interest on investments	8,165	21,720	23,299
Total receipts	197,507	529,020	655,149
Total available for appropriation	209,728	599,067	710,015
Appropriations:			
St. Lawrence Seaway Development Corporation	(11,397)	(10,749)	(11,165)
Army Corps of Engineers: Operations and maintenance of commercial navigation harbors	(159,074)	(485,500)	(498,600)
Department of the Treasury: St. Lawrence Seaway toll rebates	(9,210)	(10,300)	(10,440)
Total appropriations	(179,681)	(506,549)	(520,205)
Unappropriated balance, end of year	30,047	54,866	189,810

Source: U.S. Budget, Fiscal year 1992.

E. Inland Waterways Trust Fund

LEGISLATIVE HISTORY

The Inland Waterways Trust Fund was established in Title II of Public Law 95–502, the Inland Waterways Revenue Act of 1978 (the "1978 Act"), enacted on October 21, 1978. The purpose of the Act is to provide funding for making construction and rehabilitation expenditures for navigation on specified inland and intracoastal waterways. The Harbor Maintenance Revenue Act, Title XIV of the Water Resources Development Act of 1986 (P.L. 99–662), increased the tax rate and added one new waterway.

FINANCING MECHANISM

The 1978 Act imposed an excise tax (section 4042 of the Internal Revenue Code), effective October 1, 1980, on fuel used by vessels in commercial waterway transportation on those 26 inland and intracoastal waterways specified in section 206 of the Act. These waterways include the Mississippi River upstream from Baton Rouge, the Mississippi's tributaries, and the Gulf and Atlantic Intracoastal Waterways. The 1986 Act added the Tennessee-Tombigbee Waterway to the list of inland waterways the use of which is subject to the fuel tax, effective January 1, 1987.

The tax rate was established in the 1978 Act at 4 cents per gallon for October 1, 1980, through September 30, 1981, with scheduled increases of 2 cents per gallon on October 1, 1981 (to 6 cents), October 1, 1983 (to 8 cents), and October 1, 1995 (to 10 cents). The 1986 Act provides scheduled increases in the inland waterways fuel tax to 11 cents per gallon on January 1, 1990, to 13 cents per gallon on January 1, 1991, to 15 cents per gallon on January 1, 1992, to 17 cents per gallon on January 1, 1993, to 19 cents per gallon on January 1, 1994, and to 20 cents per gallon on January 1, 1995, and thereafter. The tax does not apply to deep-draft ocean-going vessels, passenger or fishing vessels, or certain barges. The revenues from this tax are deposited into the Trust Fund. The Trust Fund also earns interest on investments of any cash balance.

EXPENDITURE PURPOSES

Amounts in the Trust Fund are available, as provided by appropriation Acts, for making construction and rehabilitation expenditures for navigation on the inland and coastal waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978, as in effect on January 1, 1987 (the effective date of the 1986 Act provision). Not more than one-half of the cost of any construction to which section 102(a) of the 1986 Act applies may be paid from the Trust Fund. (Section 102(a) requires that one-half the costs of construction for certain listed projects be paid from amounts appropriated from the general fund of the Treasury.)

MISCELLANEOUS

The House Committee on Public Works and Transportation has jurisdiction over inland waterway authorizations.

Statutory language relating to inland waterway expenditures is located at 33 U.S.C. 1801. The Inland Waterways Trust Fund is established by section 9506 of the Internal Revenue Code.

FINANCIAL STATUS OF THE TRUST FUND

The table below describes amounts in the Inland Waterways Trust Fund that are available for appropriation.

INLAND WATERWAYS TRUST FUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990	1991 estimate	1992 estimate
Unappropriated balance, start of year	304,122	280,806	249,806
Receipts:			
Inland waterway fuel tax	62,820	59,700	70,500
Interest and profits on investments	32,228	26,300	20,100
Total receipts	95,048	86,000	90,600
Total available for appropriation	404,888	366,806	340,406
Appropriation	(124,082)	(117,000)	(137,410)
Unappropriated balance, end of year	280,806	249,806	202,996

Source: U.S. Budget, Fiscal Year 1992.

F. Hazardous Substance Superfund

LEGISLATIVE HISTORY

1980 Enactment and 1986 Amendment

A Hazardous Substance Response Trust Fund was enacted in Title II, Subtitle B of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (the "1980 Act") on December 11, 1980 (P.L. 96-510). The taxes enacted to fund the Trust Fund expired temporarily on October 1, 1986.

The Trust Fund and related taxes (including additional taxes) were reestablished by the Superfund Revenue Act of 1986 (Title V of the Superfund Amendments and Reauthorization Act of 1986, Public law 99-499) (the "1986 Act").

The 1980 Act appropriated to the Trust Fund amounts equivalent to the excise taxes received by the Treasury under Internal Revenue Code sections 4611 and 4661 on petroleum and certain chemicals, the amounts recovered on behalf of the Trust Fund under the Act, all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act, penalties assessed under Title I of the 1980 Act, and punitive damages under section 107(c)(8) of the 1980 Act.

Section 4611 of the Internal Revenue Code imposed a tax of 0.79 cent per barrel on crude oil used in, exported from, or imported into the United States. Section 4661 of the Internal Revenue Code imposed a tax (at varying rates) on any taxable chemical sold by a manufacturer, producer, or importer.

The 1980 Act also authorized to be appropriated to the Trust Fund $44 million in each fiscal year from 1981 through 1985. The 1980 Act provided for the transfer to the Trust Fund of one-half of the unobligated balance remaining on December 10, 1980, under the Fund in section 311 of the Clean Water Act and the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

When the 1986 Act reinstated the Trust Fund, its title was changed to the Hazardous Substance Superfund.

1989 Amendment

Public Law 101-221 changed the crude oil tax rate to 9.7 cents per barrel for domestic crude oil and imported petroleum products, effective December 12, 1989. (The prior tax was 8.2 cents per barrel on domestic crude oil and 11.7 cents per barrel on imported petroleum products.)

1990 Amendment

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) extended the Hazardous Substance Superfund and taxes for 4 years, January 1, 1992 through 1995, and increased the aggregate revenue limit for the Trust Fund (see below).

FINANCING MECHANISM

The 1986 Act provided for deposits into the Trust Fund of tax revenues and general revenue appropriations intended to total $8.5 billion in revenues for fiscal years 1986–1990 ($6.65 billion in tax revenues, $1.25 billion in general revenue appropriations, and $0.6 billion in interest and estimated recoveries). The 1980 legislation had been estimated to provide $1.6 billion for the Trust Fund for fiscal years 1981–1985 ($1.4 billion in tax revenues and $0.2 billion from general revenue appropriations). The Omnibus Budget Reconciliation Act of 1990 permitted Trust Fund tax revenue deposits to increase to $11.97 billion.

The specific Trust Fund tax provisions are as follows:

1. Petroleum Tax

The petroleum tax of prior law was reimposed under the 1986 Act (effective January 1, 1987) at a rate of 8.2 cents per barrel for domestic crude oil, and 11.7 cents per barrel for imported petroleum products (including imported crude oil). Effective on December 12, 1989, the petroleum tax was changed to 9.7 cents per barrel for both domestic and imported petroleum (P.L. 101–221).

The petroleum tax generally expires after December 31, 1995. The tax will terminate earlier than that date if cumulative Trust Fund tax receipts during the reauthorization period equal or exceed $11.97 billion.

2. Tax on Feedstock Chemicals

The 1986 Act reimposed the tax on feedstock chemicals at its prior law rates (except in the case of xylene). Under the 1986 Act, except for imports and exports, xylene does not include separated isomers for purposes of the tax. Taxes previously imposed on xylene are refunded or credited (with interest) to the taxpayers. To compensate for lost revenues, the tax rate on xylene was increased to $10.13 per ton through 1991. These changes were effective on January 1, 1987. This tax will expire under the same circumstances as described for the petroleum tax.

An exemption for exported feedstock chemicals and certain derivatives is allowed.

3. Tax on Imported Chemical Derivatives

Effective on January 1, 1989, a tax on certain imported chemical feedstock derivatives was imposed as though the taxable chemicals used as materials in other countries had been sold in the United States for an equivalent use. If the importer does not furnish information to make the above determination, the amount of the tax is 5 percent of the customs value of the imported chemical derivative. This tax will expire under the same circumstances as described for the petroleum tax.

4. Environmental Income Tax

The 1986 Act imposed an environmental tax based on corporate alternative minimum taxable income. The tax is equal to 0.12 percent ($12 of tax per $10,000) of alternative minimum taxable income (without regard to net operating losses and the deduction for this tax) over $2 million.

The environmental tax is effective for taxable years beginning after December 31, 1986. The environmental tax is not imposed in any taxable year beginning during a calendar year in which the petroleum and chemical feedstock taxes are not imposed.

EXPENDITURE PURPOSES

Amounts in the Trust Fund are available for expenditures, under appropriations Acts, incurred in connection with releases or threats of releases of hazardous substances into the environment. Allowable costs include (1) costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action and (2) certain costs related to response including epidemiologic studies and maintenance of emergency strike forces. Payments for natural resource damage claims are not currently allowed (although they were allowed before the 1986 Act).

MISCELLANEOUS

A separate Trust Fund, the Post-Closure Liability Trust Fund, was created by the 1980 Act to assume completely the liability of owners and operators of hazardous waste disposal facilities that have been granted permits and have been properly closed under Subtitle C of the Resource Conservation and Recovery Act. The Post-Closure Trust Fund was financed through a tax of $2.13 per dry weight ton on hazardous waste. The 1986 Act repealed the Post-Closure Fund and tax, effective October 1, 1983 (the original effective date of the tax). Taxpayers who paid the tax were allowed to file claims for refunds of the tax, plus interest.

The Hazardous Substance Superfund is established in section 9507 of the Internal Revenue Code. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is located at 42 U.S.C. 9601 et seq. The House Energy and Commerce Committee has jurisdiction over CERCLA.

FINANCIAL STATUS OF FUND

The table below describes amounts in the Hazardous Substance Superfund that are available for appropriation.

HAZARDOUS SUBSTANCE SUPERFUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990	1991 estimate	1992 estimate
Unappropriated balance, start of year	340,356	334,149	1,052,833
Receipts:			
Interest	150,160	164,819	158,267
Fines and recoveries	105,152	135,300	200,300
Tax receipts	1,278,765	1,996,900	1,209,000
Total receipts	1,534,077	2,348,019	1,567,567
Total available for appropriation	1,874,433	2,632,168	2,620,400
Appropriation	(1,540,284)	(1,629,335)	(1,764,954)
Unappropriated balance, end of year	334,149	1,052,833	855,446

Source: U.S. Budget, Fiscal Year 1992.

G. Leaking Underground Storage Tank Trust Fund

LEGISLATIVE HISTORY

The Superfund Revenue Act of 1986 (Title V of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499) (the "1986 Act") established in the Treasury the Leaking Underground Storage Tank Trust Fund and fuels taxes, effective on January 1, 1987.

The omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) reimposed the taxes (after their termination in August 31, 1990), for the period December 1, 1990 through 1995.

FINANCING MECHANISM

The 1986 Act imposed additional taxes of 0.1 cent per gallon on gasoline, diesel fuel, special motor fuels, fuels used in aviation, and fuels used in commercial transportation on inland waterways (sections 4081(b)(2)(B), 4041(d), 4091, and 4042 of the Internal Revenue Code). The additional excise tax was to terminate on the earlier of December 31, 1991, or when the net revenues from the tax exceeded $500 million. The tax was terminated on August 31, 1990, when the statutory ceiling was reached. The Omnibus Budget Reconciliation Act of 1990 reimposed the 0.1-cent-per-gallon tax (with no statutory ceiling), effective December 1, 1990, through 1995. Amounts equivalent to the taxes received in the Treasury are appropriated into the Trust Fund. In addition, amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act (recoveries from parties responsible for leaking tanks) are deposited into the Trust Fund.

EXPENDITURE PURPOSES

Amounts in the Trust Fund are available, as provided in appropriation Acts, to pay cleanup and related costs of the Environmental Protection Agency involving tanks where no solvent owners can be found, or where the owner or operator refuses or is unable to comply with an urgent corrective order. Trust Fund revenues also are available to provide grants to States for up to 90 percent of the costs of carrying out these purposes.

The Environmental Protection Agency develops and oversees the cleanup program, which is implemented by the States. Funds are allocated to the States through cooperative agreements, to clean up those sites posing the greatest threat to human health and the environment. The Trust Fund also covers administrative expenses necessary to carry out the program.

MISCELLANEOUS

The statutory provisions providing for cleanup of petroleum from leaking underground storage tanks is located at 42 U.S.C. 6991. The House Energy and Commerce Committee has jurisdiction over program aspects of the cleanup of leaking underground storage tanks.

The Trust Fund is established in section 9508 of the Internal Revenue Code.

FINANCIAL STATUS OF THE TRUST FUND

The table below describes amounts in the Leaking Underground Storage Tank Trust Fund that are available for appropriation.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990	1991 estimate	1992 estimate
Unappropriated balance, start of year	298,760	379,930	463,377
Receipts:			
Interest	33,915	40,022	40,522
Tax receipts	122,072	109,000	149,000
Total receipts	155,267	149,022	189,522
Total available for appropriation	408,100	483,136	601,693
Appropriations	(74,097)	(65,575)	(85,623)
Unappropriated balance, end of year	379,930	463,377	738,522

Source: U.S. Budget, Fiscal Year 1992.

H. Oil Spill Liability Trust Fund

LEGISLATIVE HISTORY

The Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509) (the "1986 Act") established a new trust fund in the Internal Revenue Code, the Oil Spill Liability Trust Fund. The Trust Fund was to be effective upon enactment of "qualifying authorizing legislation," which was to be "substantially identical" to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed by the House of Representatives. Under the 1986 Act, a petroleum excise tax of 1.3 cents per barrel was to become effective on enactment of the qualifying authorizing legislation and was to apply through December 31, 1991 or until reaching $300 million in tax revenue.

The Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) made the Trust Fund effective on January 1, 1990, for certain purposes and enacted a petroleum excise tax of 5 cents per barrel for the Trust Fund without a requirement of prior enactment of qualifying authorizing legislation.

The Oil Pollution Act of 1990 (P.L. 101-380) amended the Trust Fund statute to provide that the Trust Fund may be used only for expenditures that are enumerated in that Act (see below). The Act also increased the maximum amounts allowed to be expended from the Trust Fund for any single pollution incident and amounts authorized to be borrowed by the Trust Fund from the Treasury (see below).

FINANCING MECHANISM

Current revenue sources

Code section 4611(c) provides for an excise tax of 5 cents per barrel on domestic crude oil and imported petroleum products. Revenues from this tax, which is in effect for the period January 1, 1990 to December 31, 1994, are appropriated to the Trust Fund (Code sec. 9509(b)(1)). However, if the unobligated Trust Fund balance exceeds $1 billion at the end of a quarter, the tax rate will be zero (not apply) for the following quarter or quarters. If the unobligated Trust Fund balance subsequently is less than $1 billion, the tax rate will be reimposed at 5 cents per barrel beginning the quarter commencing 90 days after the close of the quarter for which the calculation was made.

In addition to the petroleum excise tax revenues, the Trust Fund is authorized to receive (1) amounts in the Deepwater Port Liability Fund, (2) amounts in the Offshore Oil Pollution Compensation Fund (Code sec. 9509(b) (5), and (6)), and (3) certain penalties imposed under the 1990 authorizing legislation. The Oil Pollution Act of 1990 consolidated balances from the Offshore Oil Pollution Compensation Fund, Deepwater Port Liability Fund, and the Clean Water Act Section 311(k) Pollution Fund into the Oil Spill Liability Trust Fund.

EXPENDITURE PURPOSES

Expenditure purposes

Certain costs incurred by the Federal Government for oil spill removal are authorized to be paid out of the Trust Fund under current law: (1) for the payment of certain removal costs and other costs, expenses, claims, and damages referred to in the Oil Pollution Act of 1990; (2) to carry out sections 5 and 7 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution; (3) for the payment of liabilities incurred by the revolving fund established by section 311(k) of the Federal Water Pollution Control Act; (4) to carry out subsections (b), (c), (d), (j), and (l) of section 311 of the Federal Water Pollution Control Act with respect to prevention, removal, and enforcement related to oil discharges (as defined in such section); (5) for the payment of liabilities incurred by the Deepwater Port Liability Fund; and (6) for the payment of liabilities incurred by the Offshore Oil Pollution Compensation Fund.

Limitations on expenditures; borrowing authority

Under the current Trust Fund statute, the maximum amount to be paid for any single incident is $1 billion, with a maximum of $500 million for natural resource damage assessments and claims in connection with any single incident.

The Trust Fund is authorized to borrow from the Treasury (repayable advances) up to a maximum of $1 billion of repayable advances at any one time. Such advances to the Trust Fund are repayable with interest as determined by the Secretary of the Treasury. Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of the Trust Fund.

MISCELLANEOUS

The Oil Spill Liability Trust Fund is established by section 9509 of the Internal Revenue Code.

Jurisdiction over program aspects of the Oil Spill Liability Trust Fund is in the House Committee on Public Works and Transportation and Committee on Merchant Marine and Fisheries

FINANCIAL STATUS OF THE TRUST FUND

The table below presents data on the financial status of the Oil Spill Liability Trust Fund.

OIL SPILL LIABILITY TRUST FUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990	1991 estimate	1992 estimate	1993 estimate
Unappropriated balance, start of year	....	366,183	566,598	744,114
Receipts (excise taxes, fines and recoveries, etc.)	163,482	280,840	292,370	315,387
Transfers from other funds	216,419	....	....	....
Total available for appropriation	358,411	625,533	826,414	1,016,507
Appropriations	....	....	(125,294)	(125,294)
Unappropriated balance, end of year	366,183	566,598	744,114	945,958

Source: U.S. Budget, Fiscal Year 1992.

I. Land and Water Conservation Fund

LEGISLATIVE HISTORY

On September 3, 1964, the Congress enacted Public Law 88–578, which established the Land and Water Conservation Fund as a separate account in the Treasury, effective January 1, 1965. Minor amendments were made to the Fund in 1965 (P.L. 89–72).

In 1968, Public Law 90–401 eliminated the system of user fees for all Federal recreation areas that had been included previously in the law. The repeal was effective December 31, 1971.[1] The 1968 Act also added authorization for additional appropriations of such amounts as were necessary to make the income of the Fund not less than $200 million for each of the five fiscal years beginning July 1, 1968, and ending June 30, 1973. To the extent that appropriated sums were insufficient to reach the required amounts, an amount sufficient to cover the remainder was to be credited to the Fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act.

In 1970, Public Law 91–485 increased the authorized appropriations to not less than $300 million for fiscal years 1971 through June 30, 1989. As a result of amendments in 1976 and 1977, the fiscal year amounts were increased to $900 million for 1978 and years thereafter (P.L. 94–422, Public Law 94–273 and Public Law 95–42).

In 1981, Public Law 96–451 provided for the transfer from the Land and Water Conservation Fund of an amount not to exceed $20 million per year for fiscal years 1981–1983 of revenues from motorboat fuel taxes to the National Recreational Boating Safety and Facilities Improvement Fund. The Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982, Public Law 97–424) increased this fiscal year limitation on transfers of motorboat fuel taxes to the Boating Fund to $45 million through September 30, 1988, which was further increased to $60 million for fiscal years 1989 and 1990 and to $70 million thereafter in the Coast Guard Authorization Act of 1988 (P.L. 100–448). The Surface Transportation and Uniform Relocation Assistance Act of 1987 (P.L. 100–17) extended this transfer through fiscal year 1993, and the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) extended the transfer through fiscal year 1995. In 1981, Public Law 96–514 provided that revenues from recreation fee collections should be deposited into the Land and Water Conservation Fund.

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[1] A limited system of fees was later reinstated, and for several years these revenues generally were to be collected into a special account in the Treasury to be administered in conjunction with, but separately from, the Land and Water Conservation Fund.

The Deficit Reduction Act of 1984 (P.L. 98-369) reduced the amount attributable to the excise taxes on gasoline and special fuels used in motorboats which is transferred to the Land and Water Conservation Fund. Under the 1984 Act, an amount not to exceed $1 million per fiscal year of the revenue attributable to these motorboat fuels excise taxes will continue to be transferred to the Fund. (See part C of this section for changes in the Boating Fund.)

FINANCING MECHANISM

Internal Revenue Code section 9503 provides that up to $1 million per year of amounts equivalent to motorboat fuel taxes are transferred from the Highway Trust Fund to the Land and Water Conservation Fund.

As provided by 16 U.S.C. 460*l*-5, the following additional amounts also are deposited in the Land and Water Conservation Fund:

(1) All proceeds (except that committed under 40 U.S.C. 485 (b) and (e) or the Independent Offices Appropriation Act or in any later appropriations act) received from any disposal of surplus real property and related personal property under the Federal Property and Administrative Services Act of 1949 (as amended), notwithstanding any provisions of law that such proceeds shall be credited to miscellaneous receipts of the Treasury;

(2) Amounts authorized to be appropriated annually to the Fund as necessary to make the income of the Fund not less than $900 million for each fiscal year; and

(3) To the extent that the appropriated sums are not sufficient to make the total annual income of the Fund equivalent to the amounts enumerated above, an amount sufficient to cover the remainder credited from revenues due and payable as miscellaneous receipts under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*).

16 U.S.C. 460*l*-5a provides that revenues from recreation fee collections by Federal agencies shall be paid into the Land and Water Conservation Fund, to be available for appropriation for any or all purposes authorized by the Land and Water Conservation Fund.

EXPENDITURE PURPOSES

16 U.S.C. 460*l*-4 provides that the land and water conservation provisions of section 460 are "to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas."

Moneys in the Fund are available for expenditures as provided in appropriation Acts. Not less than 40 percent of annual appropriations are to be used for Federal purposes: these include activities and programs of the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service and the National Park Service. The remainder of funds appropriated are for State purposes, and these funds are apportioned among the States on the basis of statutory formula and criteria.

MISCELLANEOUS

Jurisdiction over the land and water conservation programs is within the House Committee on Interior and Insular Affairs.

No annual report is required on the Fund's financial condition or operations.

The statutory provisions establishing the Land and Water Conservation Fund and governing its operation are located at 16 U.S.C. 460(l).

FINANCIAL STATUS OF THE FUND

The table below presents data on the financial status of the Land and Water Conservation Fund.

LAND AND WATER CONSERVATION FUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990	1991 estimate	1992 estimate
Unappropriated balance, start of year (regular account)	6,458,513	7,127,032	7,685,357
Receipts (regular account):			
Surplus property sales	15,046	65,024	75,024
Motorboat fuels taxes	1,000	1,000	1,000
Outer Continental Shelf receipts	883,954	833,976	823,976
Total receipts	900,000	900,000	900,000
Total available for appropriations (regular account)	7,358,513	8,027,032	8,585,357
Appropriations (regular account)	(232,481)	(341,675)	(350,274)
Unappropriated balance, end of year (regular account)	7,127,032	7,685,357	8,235,083
Special account (P.L. 95–42, sec. 1)			
Unappropriated balance, start of year	142,621	142,621	142,621
Unappropriated balance, end of year	142,621	142,621	142,621

Source: U.S. Budget, Fiscal Year 1992.

J. Federal Aid to Wildlife Restoration Fund

LEGISLATIVE HISTORY

The Act of September 2, 1937, provided for cooperation between the Federal Government and the States regarding wildlife restoration projects. The 1939 Reorganization Plan No. II, section 4(f), transferred the functions of the Secretary of Agriculture relating to the conservation of wildlife game and migratory birds to the Secretary of the Interior.

The 1937 Act provided that amounts equivalent to excise taxes on sporting arms and ammunition would be deposited into the Federal Aid to Wildlife Restoration Fund.

The Federal Aid in Wildlife Restoration Act Amendments of 1970 (Title I of Public Law 91-503), added provisions for the deposit of the amounts equivalent to excise taxes on pistols and revolvers into the Fund beginning in fiscal year 1971. Public Law 92-558 added provisions for the deposit of amounts equivalent to the excise taxes on bows and arrows and their parts and accessories into the Fund beginning with fiscal year 1975.

FINANCING MECHANISM

To carry out wildlife restoration projects, there is a permanent appropriation authorized of an amount equal to all revenues accruing from any tax imposed by Internal Revenue Code section 4161(b) on bows, arrows, and parts and accessories and section 4181 on pistols, revolvers, other firearms, shells, and cartridges. The tax amounts are appropriated in the fiscal year following the year of receipt.

Section 4161(b) imposes an excise tax of 11 percent of the manufacturer's or importer's price on bows with a draw weight of 10 pounds or more; arrows that measure 18 inches overall or more in length or arrows that measure less than 18 inches in overall length which are suitable for use with a taxable bow; and parts, accessories, or quivers suitable for use with taxable bows.

Section 4181 imposes an excise tax of 10 percent of the manufacturer's or importer's price upon the sale of pistols and revolvers and 11 percent on other firearms (i.e., sporting rifles and shotguns), shells, and cartridges. Section 4182 provides exemptions for certain machine guns (including automatic weapons), and short barrelled firearms (on which a transfer tax has been paid under section 5811) and sales to the Defense Department.

EXPENDITURE PURPOSES

Any State which wishes to receive any of these appropriations must assent to the provisions of Chapter 5B of U.S. Code Title 16 and enact laws for the conservation of wildlife including a prohibition against the diversion of license fees paid by hunters for any purpose other than the administration of the State fish and game department. The Secretary of the Interior and the State fish and game department must agree upon the wildlife restoration projects to be aided in the State. The project must conform to the standards set by the Secretary of the Interior.

A wildlife restoration project is defined to include the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefore, and the construction thereon or therein of such works as may be necessary to make them available for such purposes. The term includes also such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources. States are reimbursed up to 75 percent of the cost of approved wildlife restoration and hunter education projects.

The authorized revenues are made available until expended. Amounts not spent by a State within two fiscal years are made available for expenditure by the Secretary of the Interior to carry out the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715).

Up to 8 percent of the available funds are required to be apportioned as the Secretary of the Interior estimates necessary to administer the Migratory Bird Conservation Act. The remainder of the revenue (except as provided in the following paragraph) is apportioned among the States in the following manner: one-half in the ratio which the area of each State bears to the total area of all the States, and one-half in the ratio which the number of paid hunting-license holders of each State (2 years earlier) bears to the total number of paid license holders of all the States. No State is to receive less than one-half of 1 percent or more than 5 percent of the total amount apportioned.

One-half of the revenues from the tax imposed on pistols, revolvers, bows, and arrows is to be apportioned among the States in proportion to the ratio that the population of each States bears to the population of all the States. Each State is to be apportioned between 1 and 3 percent of the revenue under this population apportionment.

Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands can also be appropriated limited amounts of these revenues.

MISCELLANEOUS

Statutory language regarding the wildlife aid program and related matters is located at 16 U.S.C. 669 and following.

The House Committee on Merchant Marine and Fisheries has jurisdiction over expenditures for wildlife restoration projects.

FINANCIAL STATUS OF THE FUND

The table below presents data on fund amounts available for appropriation.

FEDERAL AID TO WILDLIFE RESTORATION FUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990	1991 estimate	1992 estimate
Permanent appropriation	127,194	151,783	157,600

Source: U.S. Budget for Fiscal Year 1992.

K. Reforestation Trust Fund

LEGISLATIVE HISTORY

In 1980, the Congress enacted Title III of Public Law 96-451, which provided for the amortization of certain reforestation expenses and established the Reforestation Trust Fund.

In 1982, provisions were enacted as part of the Surface Transportation Assistance Act of 1982 (H.R. 6211, P.L. 97-424) directing the Secretary of Agriculture to expend all amounts in the Trust Fund during fiscal years 1983, 1984, and 1985, and directing that the Secretary spend not less than $104 million in fiscal year 1983. The 1982 Act also stated that it was the intent of the Congress that amounts remaining in the Trust Fund as of October 1, 1985, from the earlier period were to be distributed to the States for use in State forestry programs no later than April 30, 1986.

FINANCING MECHANISM

Funds for the Reforestation Trust Fund are derived from import duties on plywood and lumber. The Secretary of the Treasury is required to transfer receipts from these tariffs to the Trust Fund in maximum amounts of $30 million for each fiscal year. In addition, the Trust Fund earns interest on investments of any cash balance.

EXPENDITURE PURPOSES

Moneys in the Trust Fund are to be used to supplement congressional appropriations for reforestation and timber stock improvement on publicly owned national forests, in order to eliminate and prevent a backlog in reforestation of the National Forest System.

For each of the five fiscal years from fiscal year 1981 through fiscal year 1985, appropriations were authorized from the Trust Fund to the Secretary of Agriculture to pay estimated necessary direct costs and properly allocable administrative costs for reforestation and related programs (under section 3(d)(2)) of the Forest Rangeland Resources Planning Act of 1974 (16 U.S.C. 1601(d)(2)), but only to the extent these estimated costs exceeded amounts appropriated out of the general fund for these purposes.

While the expenditure language regarding the Trust Fund appears to provide expenditure purposes only through fiscal year 1985, it does add that it is the intent of the Congress that the Secretary of Agriculture expend all of the funds available in the Trust Fund in each fiscal year. Any such funds which are not expended in a given fiscal year remain available for expenditure without fiscal year limitation (except as noted above).

MISCELLANEOUS

After consulting with the Secretary of Agriculture, the Secretary of the Treasury must submit annual reports to the Congress setting forth the financial condition and operating results of the Reforestation Trust Fund for the preceding fiscal year and the expected condition and results of the Trust Fund for the next year.

The statutory language establishing the Reforestation Trust Fund and governing its operations are located at 16 U.S.C. 1606(a).

FINANCIAL STATUS OF FUND

The table below presents data on amounts in the Reforestation Trust Fund available for appropriation.

REFORESTATION TRUST FUND: AMOUNTS AVAILABLE FOR APPROPRIATION

[In thousands of dollars]

	1990 [1]	1991 estimate	1992 estimate
Unobligated balance, start of year	(3,686)	(2,601)	(3,300)
Total obligations	28,334	30,601	30,000
Outlays	26,626	30,979	30,000

Source: U.S. Budget, Fiscal Year 1992.

L. Deep Seabed Revenue Sharing Trust Fund (Expired)

LEGISLATIVE HISTORY

The Deep Seabed Revenue Sharing Trust Fund was established in 1979 by Title IX of the Deep Seabed Hard Mineral Resources Act (P.L. 96-283, enacted on June 28, 1980). The purpose of the Trust Fund is to accelerate the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assure that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea. An additional purpose is to encourage continued development of deep seabed mining technology.

FINANCING MECHANISM

The Deep Seabed Revenue Sharing Trust Fund is funded by amounts determined by the Secretary of the Treasury to be equivalent to the amount of the excise taxes received in the Treasury under the Deep Seabed Hard Mineral Removal Tax Act of 1979. The excise tax, imposed under Internal Revenue Code section 4495, is 3.75 percent of the "imputed value" of hard mineral resources removed from the deep seabed.[1] The tax was imposed as of January 1, 1980, to terminate after the earlier of (a) the date on which an international deep seabed treaty takes effect with respect to the United States or (b) June 29, 1990.[2] However, the tax is imposed only in conjunction with deep seabed permits issued under the Resources Act. No such permits have yet been issued, since the technology for commercial recovery of deep seabed minerals has not yet been developed. Consequently, no revenues have yet been collected under the Act.[3]

EXPENDITURE PURPOSES

Appropriations have been authorized from the Trust Fund for making contributions required pursuant to any international deep seabed treaty which became effective with respect to the United States on or before June 28, 1990. Trust Fund amounts could have been appropriated for making contributions required under such a treaty for the purpose of sharing the revenue from deep seabed mining among nations of the world. No such treaty became effective.

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[1] The "imputed value" is equal to 20 percent of the fair market value of the commercially recoverable metals and minerals in such resources. Thus, the effective tax rate is 0.75 percent of the fair market value of the resource. (Sec. 4495)

[2] The United States has not yet entered into such a treaty.

[3] If the tax were to be implemented, a mining company could elect to have the application of the excise tax suspended with respect to one or more commercially recoverable metals or minerals contained in the nodules removed from the deep seabed if the mining company did not intend to process, use commercially, or sell that metal or mineral within one year after the date of extraction. If a mining company elects to suspend the tax on a mineral and later processes, uses, or sells that mineral, then the mining company is liable for the excise tax and interest on the deferred amount. The interest is paid into the Trust Fund and is treated like other amounts in the Trust Fund. If the additional tax is paid after substantial disposition of Trust Fund assets by Congress, the additional tax is to be disposed of in a manner provided in the legislation making the substantial disposition or in subsequent acts.

MISCELLANEOUS

The Secretary of the Treasury was required to submit an annual report to the Congress with respect to the Deep Seabed Revenue Sharing Trust Fund beginning with the fiscal year ending September 30, 1980.

The statutory provisions establishing the Deep Seabed Revenue Sharing Trust Fund and governing its operation are located at 30 U.S.C. 1472.

FINANCIAL STATUS OF FUND

As indicated above, there have not been any excise tax revenues collected for the Trust Fund nor any appropriations from the Trust Fund.

M. Tax Court Judges Survivors Annuity Fund

LEGISLATIVE HISTORY

The Tax Court Judges Survivors Annuity Fund was enacted in Public Law 87-370 on October 4, 1961. Amendments which increase the annuity amounts payable from the Fund were enacted in Public Law 97-362 (H.R. 4717) on October 25, 1982. Amendments to increase the maximum annuities receivable by surviving children of a deceased Tax Court judge where the judge also leaves a surviving spouse were enacted in Public Law 98-369 (H.R. 4170) on July 18, 1984. Amendments to make the survivors annuity provisions relating to Tax Court judges parallel to those applicable to other Federal judges, following enactment of Public Law 99-336, were enacted in Public Law 99-514 (H.R. 3838), generally effective on November 1, 1986. Internal Revenue Code section 7448 provides the statutory basis for the annuities to surviving spouses and dependent children of Tax Court judges.

FINANCING MECHANISM

Any judge of the United States Tax Court may by written election while a judge (or before a successor takes office) participate in the Fund. There is deducted and withheld from the salary of each judge electing to participate 3.5 percent of that judge's salary. The amounts deducted and withheld are deposited, in accordance with procedures prescribed by the Comptroller General of the United States, in the U.S. Treasury to the credit of the Tax Court Judges Survivors Annuity Fund. A judge may deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the Fund, a sum equal to 3 percent of the judge's salary and of that individual's basic salary, pay, or compensation for service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, and for any other civilian service within the purview of 5 U.S.C. 8332 for services performed before November 1, 1986, and 3.5 percent for services performed after November 1, 1986. Each judge may elect to make the deposits in installments during continuance of service as a judge in such amount and under such conditions as may be determined in each instance by the chief judge of the Tax Court.

Notwithstanding the failure of a judge to make the deposit, credit is allowed for the service rendered, but the annuity of the surviving spouse of the judge is reduced by an amount equal to 10 percent of the amount of the deposit, computed as of the date of the death of the judge (unless the surviving spouse elects not to count the service, for which the deposit was not made, in determining the annuity due). No deposit is required from a judge for any year with respect to which deductions from salary were actually made under the civil service retirement laws. Also, no deposit is required for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

EXPENDITURE PURPOSES

The Fund is used to pay annuities to a deceased judge's surviving spouse and children.

If a judge who elects to participate in the Fund dies after having rendered at least 5 years of civilian service for which salary was withheld for the Fund (or for which salary was withheld under the civil service retirement laws), a surviving spouse or surviving dependent child is entitled to an annuity from the Fund. If the surviving spouse has not attained age 50 at the date of the judge's death (and no dependent child survives), the annuity commences when the surviving spouse reaches age 50. The annuity payable to a surviving spouse terminates upon the surviving spouse's death or remarriage. An annuity payable to a dependent child and to a surviving spouse, if the judge is also survived by a dependent child, begins immediately after the judge's death. The annuity for a dependent child terminates generally upon the surviving child's reaching 18 years of age, marriage, or death. If the child is incapable of self support because of mental or physical disability, the annuity would terminate only upon death, marriage, or recovery from the disability.

The annuity payable to a surviving spouse of a judge electing under the Fund is equal to a stated percentage (generally 1¼ percent) of the average annual salary received by the judge (whether the judge's salary or compensation for other allowable Federal service) for the 5 consecutive years in which the judge received the largest average annual salary, multiplied by the sum of years of judicial or other allowable Federal service. The annuity for the surviving spouse cannot exceed 37½ percent of the average annual salary of the judge. The annuity of the surviving spouse will be reduced to account for periods of time when the judge did not contribute to the Fund. The amount of the annuity payable to a surviving dependent is based upon the annuity payable to a surviving spouse (subject to certain limits).

Under the 1982 amendments, annuities payable with respect to judges dying after the date of enactment are increased by (1) basing the annuity on the judges' salary for the 3 (versus 5) consecutive years in which the judges received the largest average annual salary, and (2) increasing the maximum annuity to 40 percent (versus 37½ percent) of such average annual salary. These amendments also provide that survivor annuities will be adjusted for cost-of-living increases by increasing such annuities by 3 percent for each 5 percent by which the salary of Tax Court judges is increased. Annuities in pay status on the date of enactment are adjusted immediately to reflect post-1963 salary increases.

Under the 1984 amendments, the maximum annuities receivable by surviving children of a deceased Tax Court judge where the judge also leaves a surviving spouse are increased from $900 per year per family ($360 per child) to $4,644 per year per family

($1,548 per child). Where there is no surviving spouse, the maximum annuities for surviving dependent children are increased to $5,580 per year per family, or $1,860 per child, whichever is less. These increases are effective for annuities payable for months beginning after July 18, 1984.

Under the 1986 Tax Reform Act, the judges' salary contribution to the fund and civilian service for benefits to be payable under the program increased from 3 percent to 3.5 percent. The annuity for a surviving spouse increased to 1½ percent (versus 1¼ percent) of the judge's average salary per the 3-year consecutive year requirement, but cannot exceed 50 percent (versus 40 percent) of the average annual salary, nor be less than 25 percent of the average annual salary. The annuity payable to a surviving spouse does not terminate upon remarriage at 55 or older. Where there are children and a surviving spouse, the maximum annuity per child is the lesser of 10 percent of the average annual salary, or 20 percent of the average annual salary divided by the number of children (versus the lesser of 50 percent of the spouse's annuity to $4,644 per year per family, or $1,548 per child). Where there is no surviving spouse, the maximum annuity per child is the lesser of 20 percent of the average annual salary or 40 percent of the average annual salary divided by the number of children (versus an amount equal to what a spouse would have received if surviving not to exceed $5,580 per year per family, $1,860 per child, whichever is less). Judges who retire under a new retirement election, i.e., fixed salary and opportunity to practice law, will continue to have the prescribed deduction (3.5 percent) withheld from their retired pay and will receive credit for those years of contribution. A judge who "ceases to be married" after electing to participate in the Fund may terminate his participation and receive a refund of contributions plus interest. The increase in salary deductions is effective November 1, 1986. The increase in the civilian service percentage is effective for service performed after November 1, 1986. The amendments apply to annuities starting after November 1, 1986. Any judge elected prior to November 1, 1986, to participate in the fund may revoke that election within the 180-day period beginning after enactment and receive a refund of contributions plus interest. Any judge who revokes within the 180-day period may later participate only upon repayment of entire refund plus interest.

FINANCIAL STATUS OF FUND

As of September 30, 1990, 26 judges of the Tax Court were participating in the Fund, and 5 eligible widows were receiving survivor annuities.

Actual outlays for fiscal years 1986, 1987, 1988, 1989, and 1990 were $53,000, $60,000, $96,000, $102,000, and $130,000 respectively; and estimated outlays for fiscal years 1991 and 1992 are $130,000 each.

Section 7. Social Security Payroll Taxes

BACKGROUND

The Social Security Act of 1935 was signed into law on August 14, 1935. The immediate origin of this legislation was the Committee on Economic Security which had been charged by President Roosevelt with the task of devising safeguards "against misfortune which cannot be wholly eliminated in the man-made world of ours."

In addition to the Federal old-age retirement program (title II), the original Social Security Act also included grants-in-aid to States for: old-age pensions based on need (title I); unemployment compensation systems (title III); aid to dependent children (title IV); maternal and child welfare services, care of crippled children (title V); and public health work (title VI).

The original act has been amended on numerous occasions since 1935. However, the most significant changes to title II were made by the Social Security Amendments of 1939, 1950, 1954, 1956, 1965, 1972, 1977, and 1983. In addition, the Medicare (title VIII) program was added to the Social Security Act of 1965.

Today the term "Social Security" is seldom used to refer to all of the programs included in the Social Security Act. The term is most often used to refer to the old-age and survivor insurance program (OASI), the disability insurance program (DI), both under title II, and Medicare part A hospital insurance (HI) under title XVIII. Together these are known as the OASDHI programs. Each of these programs is funded through a separate trust fund. The payroll tax that finances these trust funds is known collectively as the OASDHI tax. While the OASDHI payroll tax is generally collected as a single tax, portions of it are allocated by statute among the three separate trust funds.

OVERVIEW OF CURRENT LAW FINANCING

The Social Security programs (OASDHI) are financed through the payroll tax and from income taxes paid on Social Security benefits. Most of current income to the system goes directly to meet current benefit obligations. Any funds collected in excess of the amount needed to make benefit payments are credited to the trust funds as reserves, in the form of Government securities. These reserves serve as a cushion against temporary shortfalls in revenues or large increases in outlays due to economic fluctuations; the reserves also provide interest income to the trust funds. As a result of the Social Security Amendments of 1983, OASDI (but not HI) reserves are projected to build rapidly in the next quarter century.

Trust fund income is dependent on the amount of wages covered by Social Security on which taxes are levied according to the payroll tax rate for each year. Benefit outlays are made under a permanent appropriation, equal to the amount to which beneficiaries are entitled based on their earnings records, and are not limited to the amount of revenue credited to the trust fund from contributions and interest. If, as has occurred in the early 1980's, yearly income is insufficient to cover benefit payments, reserves are used to make up the difference.

EMPLOYEE/EMPLOYER PAYROLL TAX (FICA)

The payroll tax is levied on earnings in employment covered by Social Security. The payroll tax is sometimes termed the FICA (Federal Insurance Contributions Act) tax. Portions of the total tax rate are allocated by law to each of the three trust funds (OASI, DI and HI). All persons who work in covered employment pay this mandatory tax on their earnings up to maximum dollar amount. The maximum amount of earnings subject to the tax is known as the contribution and benefit base, or earnings base. The Omnibus Budget Reconciliation Act of 1990 established two separate contribution bases, one for the OASDI tax and another for the HI tax. The employee's employer also pays a FICA tax equal to the tax paid by the employee.

The employer's share of FICA is deductible for income tax purposes. The employee's share is not deductible. Employees (and employers) do not pay taxes on earnings in excess of the maximum earnings bases for OASDI and for HI.

As of January 1, 1991, the employer and the employee each pay an OASDI tax equal to 6.20 percent of the first $53,400 of earnings and an HI tax rate of 1.45 percent of the first $125,000 of earnings. The maximum amount of combined OASDHI tax payable by each is $5,123.30. The maximum combined liability of an employer and employee equals $10,246.60.

No future increase in the payroll tax rate is scheduled. The OASDI and HI earnings bases increase each year automatically according to a statutory formula. The increase is based on the increase in average wages in the economy, excluding self-employment earnings, each year. Increases are effective on a calendar year basis.

SELF-EMPLOYMENT PAYROLL TAX (SECA)

Individuals who are self-employed pay OASDHI taxes in the form of the self-employment tax (often termed the SECA, or Self-Employed Contributions Act, tax). The self-employment OASDHI tax equals the combined FICA tax rate paid by employers and employees. The tax rate equals 15.3 percent (12.40 percent OASDI and 2.90 percent HI). The OASDI earnings base in 1991 is $53,400 and the HI earnings base is $125,000. The maximum self-employment tax liability for an individual in 1991 equals $10,246.60 ($6,621.60 in OASDI tax and $3,625 in HI tax). Effective in 1990 and thereafter, the self-employed are permitted to deduct 7.65 percent from their net earnings before computing their Social Security tax and can also deduct as a business expense for income tax purposes half of their Social Security tax. The deduction is designed to reflect the fact that one-half the SECA tax represents the employer's share of the payroll tax (which is deductible to the employer).

HISTORY OF PAYROLL TAX RATES AND EARNINGS BASE

Employer/Employee Payroll Taxes: The earnings base has increased numerous times since 1937. A majority of these increases have been provided through specific legislative amendments. The earnings base is currently automatically adjusted annually according to the increase in average wages in the economy. However, this adjustment takes place only if a cost-of-living benefit increase becomes effective for the previous December. The Omnibus Budget Reconciliation Act of 1989 modified the formula under which the annual increase in the earnings base is calculated. As a result of this modification, the earnings base in 1990 (and years thereafter) results from an automatic increase based on calculations of an increase in average earnings which include certain types of deferred compensation, such as contributions to a 401(k) plan. The OBRA of 1990 established for the first time a separate earnings base for the HI program.

The payroll tax rates have also been changed many times since 1937. Under the original act, the OASI tax rate was scheduled to gradually increase from 1 percent in 1937 to 3 percent in 1949. These increases were delayed several times during the 1940's and the tax rate did not increase to 1.5 percent until 1950. The current 1991 OASI tax rate is 5.60 percent. The tax for the disability insurance program was 0.25 percent in 1957 and 0.60 percent in 1991. The hospital insurance (Medicare part A) rate was 0.35 percent in 1966 and is currently 1.45 percent. (For 1984 only, employees were allowed a credit of 0.3 percent of taxable wages against their FICA tax liability, reducing the effective tax rare to 6.7 percent.)

Table 3 shows a history of the earnings base and the payroll tax rate (for employers and employees) since 1937. Table 4 shows a history of the maximum employee contribution (that is, the payroll tax rate multiplied by the earnings base) since 1937.

Self-Employment Taxes: Beginning in 1984, the OASDHI rate for self-employed persons was made equal to the combined employer-employee OASDHI rate. For 1984, self-employed persons were allowed a credit (comparable to the credit allowed employers against the FICA tax) against SECA tax equal to 2.7 percent of net self-employment income. For 1985, the amount of the credit was 2.3 percent. For 1986 through 1989, the credit was 2.0 percent. The SECA tax credit could directly be taken into account in computing SECA liability for taxable year and estimated tax payments for that year.

Effective in 1990 and thereafter, the credit is replaced with a system designed to achieve parity between employees and the self-employed. Under this system, the self-employed are allowed to deduct 7.65 percent from their net earnings before computing their Social Security tax and are also able to deduct half of their Social Security tax as a business expense for income tax purposes.

Table 5 shows a history of rates and earnings base of the self-employment tax. Table 6 shows a history of the maximum self-employment tax liability.

PAYROLL TAX COVERAGE: TYPES OF EMPLOYMENT SUBJECT TO OASDHI PAYROLL TAX

The original Social Security Act provided coverage on a mandatory basis under the old-age insurance program of all employees in commerce and industry (except railroad) under age 65. Specifically excluded from coverage "due to difficulties in collecting the tax" were the following services: agricultural labor; domestic services in a private home; casual labor not in the course of the employer's trade or business; and services performed by an officer or member of a crew on a documented vessel. Also specifically excluded were services performed in the employ of: the United States Government, a State or any political subdivision of a State; and nonprofit (including religious) organizations.

Coverage has been extended both on a mandatory and a voluntary basis. Mandatory coverage was extended to workers age 65 and over not otherwise excluded in 1939. In 1950 most non-farm self-employed, regularly employed farm and domestic workers, and Federal civilian employees not under a retirement system were covered on a mandatory basis. In addition, the 1950 amendments provided elective coverage to State and local government employees not under a retirement system and employees of nonprofit organizations.

The most significant extensions of coverage provided by the 1954 amendments were to self-employed farmers on a mandatory basis and, on an elective basis, State and local government employees (except firemen and policemen) under retirement systems and ministers. Coverage was extended to members of the uniformed services in 1956, and to ministers and members of religious orders who do not choose to be exempt on religious grounds. Coverage was extended to professional self-employed persons in 1954, 1956, and 1965. In 1983, coverage was extended on a compulsory basis to the following major groups: Federal employees hired after December 31, 1983; current and future members of Congress; the President and Vice President; Federal judges; and all employees of nonprofit organizations. Also, terminations of Social Security coverage for employees of State and local governments were no longer allowed. Effective July 2, 1991, State and local government employees not under a retirement system are covered mandatorily under OASDHI.

Effective in 1983, Federal civilians are covered under the hospital insurance portion of the Medicare program. Medicare coverage was also extended on a mandatory basis to State and local government employees hired after March 31, 1986. States are permitted to extend Medicare coverage (without extending coverage under Social Security cash benefits) to employees hired prior to April, 1986 by voluntary agreement with the Secretary of the Department of Health and Human Services (HHS).

The increase in Social Security coverage since the program's beginning has been significant. In 1939, civilian employment covered by the Social Security system included 24 million employees, or 55.1 percent of the labor force. In 1988, covered employment accounted for 108.4 million employees, or 93.8 percent of the labor force (see table 7). Earnings subject to the payroll tax have grown from $69.1 billion in 1946 to $2.26 trillion in 1989 (table 8).

While coverage is compulsory for most employment, some workers are not covered at present. These include Federal civilian employees hired before January 1, 1984, State and local government employees covered under a retirement system for whom coverage has not been elected, and certain workers exempted on religious grounds. (See table 9 for numbers and percentages of various types of workers covered under OASDHI and table 10 for numbers and percentages of State and local government employees covered under OASDHI by State.)

TAXATION OF SOCIAL SECURITY (OASDI) BENEFITS FOR HIGHER INCOME PERSONS

Beginning in 1984, as much as one-half of OASDI benefits (and railroad retirement tier 1 benefits) are included in taxable income for taxpayers with incomes above certain base amounts. The sum of a taxpayer's (1) adjusted gross income, before Social Security benefits are considered, (2) tax-free interest income and (3) one-half of OASDI benefits is compared to a base amount of $25,000 for a single taxpayer, or $32,000 for a married couple filing a joint return. If the sum exceeds the base amount, the amount of benefits to be included in taxable income is the lesser of:

(a) one-half of the excess of such sum over the base amount, or

(b) one-half of the amount of benefits received.

The following table contains several examples which illustrate the taxation of Social Security benefits.

EXAMPLES

	A	B	C	D	E
1. Type of taxpayer	Single	Single	Couple	Couple	Couple
2. Adjusted gross income	$16,000	$23,000	$24,000	$28,000	$50,000
3. Tax-free interest income	0	0	0	0	0
4. Social Security	4,000	8,000	3,000	6,000	10,000
5. Sum of Lines 2 plus 3 plus ½ of 4	18,000	27,000	25,500	31,000	55,000
6. Base amount	25,000	25,000	32,000	32,000	32,000
7. Excess amount—line 5 minus 6	−7,000	2,000	−6,500	−1,000	23,000
8. Amount of Social Security which is taxed. If line 7 is positive, lesser of ½ of lines 7 or 4. If line 7 is zero or negative, enter 0	0	1,000	0	0	5,000

The proceeds from the taxation of Social Security benefits are credited to the OASDI trust funds.

For calendar year 1990, it is estimated that 21 percent [1] of Social Security beneficiaries will be affected by the taxation of benefits provisions.

TABLE 1.—OASDHI PAYROLL TAX (1991): CONTRIBUTION RATE (EMPLOYER AND EMPLOYEE), MAXIMUM TAXABLE EARNINGS, AND MAXIMUM EMPLOYEE CONTRIBUTION

	Tax rate	Maximum tax base	Maximum employee contribution
OASI	5.6	$53,400	$2,990.40
DI	0.60	53,400	320.40
HI	1.45	125,000	1,812.50
Total OASDHI	7.65		5,123.30

Source: Social Security Bulletin, Annual Supplement, 1990.

TABLE 2.—SELF-EMPLOYED OASDHI TAX (1991): CONTRIBUTION RATE, MAXIMUM TAXABLE EARNINGS, AND MAXIMUM CONTRIBUTION

	Tax rate	Maximum tax base	Maximum employee contribution
OASI	11.2	$53,400	$5,980.80
DI	1.2	53,400	640.80
HI	2.9	125,000	3,625.00
Total OASDHI	15.3		10,246.60

Source: Social Security Bulletin, Annual Supplement, 1990.

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[1] This figure is taken from the 1990 Green Book, Committee on Ways and Means, "Overview of Entitlement Programs," Section 1, table 13.)

TABLE 3.—ANNUAL MAXIMUM TAXABLE EARNINGS AND CONTRIBUTION RATE: EMPLOYERS AND EMPLOYEES, 1937–2000 AND THEREAFTER

Beginning—	Annual maximum taxable earnings OASDI	Annual maximum taxable earnings HI	Contribution rate (percent of covered earnings)			
			Total	OASI	DI	HI
1937	$3,000		1	1		
1950	3,000		1.5	1.5		
1951	3,600		1.5	1.5		
1954	3,600		2	2		
1955	4,200		2	2		
1957	4,200		2.25	2	0.25	
1959	4,800		2.5	2.25	.25	
1960	4,800		3	2.75	.25	
1962	4,800		3.125	2.875	.25	
1963	4,800		3.625	3.375	.25	
1966	6,600	6,600	4.2	3.5	.35	0.35
1967	6,600	6,600	4.4	3.55	.35	.5
1968	7,800	7,800	4.4	3.325	.475	.6
1969	7,800	7,800	4.8	3.725	.475	.6
1970	7,800	7,800	4.8	3.65	.55	.6
1971	7,800	7,800	5.2	4.05	.55	.6
1972	9,000	9,000	5.2	4.05	.55	.6
1973	10,800	10,800	5.85	4.3	.55	1.0
1974	13,200	13,200	5.85	4.375	.575	.9
1975	14,100	14,100	5.85	4.375	.575	.9
1976	15,300	15,300	5.85	4.375	.575	.9
1977	16,500	16,500	5.85	4.375	.575	.9
1978	17,700	17,700	6.05	4.275	.775	1.00
1979	22,900	22,900	6.13	4.33	.75	1.05
1980	25,900	25,900	6.13	4.52	.56	1.05
1981	29,700	29,700	6.65	4.70	.65	1.3
1982	32,400	32,400	6.7	4.575	.825	1.3
1983	35,700	35,700	6.7	4.775	.625	1.3
1984 [1]	37,800	37,800	7.0	5.2	.5	1.3
1985	39,600	39,600	7.05	5.2	.5	1.35
1986	42,000	42,000	7.15	5.2	.5	1.45
1987	43,800	43,800	7.15	5.2	.5	1.45
1988	45,000	45,000	7.51	5.53	.53	1.45
1989	48,000	48,000	7.51	5.53	.53	1.45
1990	51,300	51,300	7.65	5.6	.60	1.45
1991	53,400	[2] 125,000	7.65	5.6	.60	1.45
1992–1999	(3)	(3)	7.65	5.6	.60	1.45
2000 and thereafter	(3)	(3)	7.65	5.49	.71	1.45

[1] Tax credits apply for 1984.

[2] Based on 1990 legislation.

[3] Subject to automatic increase.

Source: Social Security Bulletin, Annual Supplement, 1990.

TABLE 4.—MAXIMUM ANNUAL CONTRIBUTION: EMPLOYEE, 1937–91

Beginning—	Total	OASI	DI	HI
1937	$30.00	$30.00		
1950	45.00	45.00		
1951	54.00	54.00		
1954	72.00	72.00		
1955	84.00	84.00		
1957	94.50	84.00	$10.50	
1959	120.00	108.00	12.00	
1960	144.00	132.00	12.00	
1962	150.00	138.00	12.00	
1963	174.00	162.00	12.00	
1966	277.20	231.00	23.10	$23.10
1967	290.40	234.30	23.10	33.00
1968	343.20	259.35	37.05	46.80
1969	374.40	290.55	37.05	46.80
1970	374.40	284.70	42.90	46.80
1971	405.60	315.60	42.90	46.80
1972	468.00	364.50	49.50	54.00
1973	631.80	464.40	59.50	108.00
1974	772.20	577.50	75.90	118.80
1975	824.85	616.88	81.08	126.90
1976	895.05	669.38	87.98	137.70
1977	965.25	721.88	94.88	148.50
1978	1,070.85	756.68	137.18	177.00
1979	1,403.77	991.57	171.75	240.45
1980	1,587.67	1,170.68	145.04	271.95
1981	1,975.05	1,395.90	193.05	386.10
1982	2,170.80	1,482.30	267.30	421.20
1983	2,391.90	1,704.68	223.12	464.10
1984 [1]	2,532.60	1,862.15	179.05	491.40
1985	2,791.80	2,059.20	198.00	534.60
1986	3,003.00	2,184.00	210.00	609.00
1987	3,131.70	2,277.60	219.00	635.10
1988	3,379.50	2,488.50	238.50	652.50
1989	3,604.80	2,654.40	254.40	696.00
1990	3,924.45	2,872.80	307.80	743.85
1991	5,123.30	2,990.40	320.40	1,812.50
Total cumulative employee contributions, 1952–91 [1]	46,330.54	33,433.17	3,824.42	9,072.95

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[1] Reflects reduction for tax credit of 0.3 percent of taxable wages. The credit was allowed only for the employee's Social Security contribution.

Source: Social Security Bulletin, Annual Statistical Supplement, 1990 and SSA Office of the Actuary.

TABLE 5.—ANNUAL MAXIMUM TAXABLE EARNINGS AND CONTRIBUTION RATE: SELF-EMPLOYED, 1937–2000 AND THEREAFTER

Beginning—	Annual maximum OASDI taxable earnings	Annual maximum taxable earnings HI	Contribution rate (percent of covered earnings)			
			Total	OASI	DI	HI
1937	$3,000	....	....	....	....	....
1950	3,000	....	....	....	....	....
1951	3,600	....	2.25	2.25	....	....
1954	3,600	....	3	3	....	....
1955	4,200	....	3	3	....	....
1957	4,200	....	3.375	3	0.375	....
1959	4,800	....	3.75	3.375	.375	....
1960	4,800	....	4.5	4.125	.375	....
1962	4,800	....	4.7	4.325	.375	....
1963	4,800	....	5.4	5.025	.375	....
1966	6,600	6,600	6.15	5.275	.525	0.35
1967	6,600	6,600	6.4	5.375	.525	.5
1968	7,800	7,800	6.4	5.0875	.7125	.6
1969	7,800	7,800	6.9	5.5875	.7125	.6
1970	7,800	7,800	6.9	5.475	.825	.6
1971	7,800	7,800	7.5	6.075	.825	.6
1972	9,000	9,000	7.5	6.075	.825	.6
1973	10,800	10,800	8	6.205	.795	1.0
1974	13,200	13,200	7.9	6.185	.815	.9
1975	14,100	14,100	7.9	6.185	.815	.9
1976	15,300	15,300	7.9	6.185	.815	.9
1977	16,500	16,500	7.9	6.185	.815	.9
1978	17,700	17,700	8.10	6.01	1.09	1.00
1979	22,900	22,900	8.10	6.01	1.04	1.05
1980	25,900	25,900	8.10	6.2725	.7775	1.05
1981	29,700	29,700	9.30	7.025	.975	1.30
1982	32,400	32,400	9.35	6.8125	1.2375	1.30
1983	35,700	35,700	9.35	7.1125	.9375	1.30
1984 [1]	37,800	37,800	14.0	10.4	1.0	2.6
1985 [1]	39,600	39,600	14.1	10.4	1.0	2.7
1986 [1]	42,000	42,000	14.3	10.4	1.0	2.9
1987 [1]	43,800	43,800	14.3	10.4	1.0	2.9
1988 [1]	45,000	45,000	15.02	11.06	1.06	2.9
1989 [1]	48,000	48,000	15.02	11.06	1.06	2.9
1990	51,300	51,300	15.3	11.2	1.2	2.9
1991	53,400	125,000	15.3	11.2	1.2	2.9
1992–99	(2)	(2)	15.3	11.2	1.2	2.9
2000 and thereafter	(2)	(2)	15.3	10.98	1.42	2.9

[1] Tax credits apply from 1984 through 1989. [2] Subject to automatic increase.

Source: Social Security Bulletin, Annual Statistical Supplement, 1990.

TABLE 6.—MAXIMUM ANNUAL CONTRIBUTION: SELF-EMPLOYED, 1937–91

Beginning—	Total	OASI	DI	HI
1937				
1950				
1951	$81.00	$81.00		
1954	108.00	108.00		
1955	126.00	126.00		
1957	141.75	126.00	$15.75	
1959	180.00	162.00	18.00	
1960	216.00	198.00	18.00	
1962	225.60	207.60	18.00	
1963	259.20	241.20	18.00	
1966	405.90	348.16	34.65	$23.10
1967	422.40	354.75	34.65	33.00
1968	499.20	396.82	55.57	46.80
1969	538.20	435.82	55.57	46.80
1970	538.20	427.05	64.35	46.80
1971	585.00	473.85	64.35	46.80
1972	675.00	546.75	74.25	54.00
1973	864.00	670.14	85.86	108.00
1974	1,042.80	816.42	107.58	118.80
1975	1,113.90	872.08	114.91	126.90
1976	1,208.70	946.30	124.69	137.70
1977	1,303.50	1,020.52	134.47	148.50
1978	1,433.70	1,063.77	192.93	177.00
1979	1,854.90	1,376.29	238.16	240.45
1980	2,097.90	1,624.58	201.37	271.95
1981	2,762.10	2,086.43	289.57	386.10
1982	3,029.40	2,207.25	400.95	421.20
1983	3,337.95	2,539.16	334.69	464.10
1984 [1]	4,271.40	3,171.42	306.18	793.80
1985 [1]	4,672.80	3,445.20	332.64	894.96
1986 [1]	5,166.00	3,759.00	361.20	1,045.80
1987 [1]	5,387.40	3,920.10	376.68	1,090.62
1988 [1]	5,859.00	4,315.50	414.00	1,129.50
1989 [1]	6,249.60	4,603.20	441.60	1,204.80
1990	7,848.90	5,745.60	615.00	1,487.70
1991	10,246.60	5,980.80	640.80	3,625.00
Cumulative contributions, 1952–91 [1]	75,835.15	55,410.17	6,254.80	14,170.18

[1] Reflects reduction for tax credit of 2.7 percent in 1984, 2.3 percent in 1985, and 2.0 percent in 1986–89 against OASDHI self-employment taxes.

Source: Social Security Bulletin, Annual Statistical Supplement, 1990 and SSA Office of the Actuary.

TABLE 7.—CIVILIAN WORKERS COVERED BY SOCIAL SECURITY SYSTEM, 1939–88

[In millions]

Year	Paid civilian employees [1]	OASDI coverage	Percent coverage	OASDHI coverage	Percent covered
1939 [2]	43.6	24.0	55.1	24.0	55.1
1944 [2]	51.2	30.8	60.2	30.8	60.2
1949 [2]	56.7	34.3	60.5	34.3	60.5
1954 [2]	59.5	45.3	76.1	45.3	76.1
1955	62.8	51.8	82.5	51.8	82.5
1956	63.2	53.2	84.2	53.2	84.2
1957	63.1	53.7	85.1	53.7	85.1
1958	62.7	53.4	85.2	53.4	85.2
1959	64.4	55.4	86.0	55.4	86.0
1960	64.6	55.7	86.2	55.7	86.2
1961	65.3	56.1	85.9	56.1	85.9
1962	66.4	57.3	86.3	57.3	86.3
1963	67.6	58.5	86.5	58.5	86.5
1964	69.3	60.1	86.7	60.1	86.7
1965	71.6	62.7	87.6	62.7	87.6
1966	73.6	64.9	88.2	64.9	88.2
1967	74.4	65.7	88.3	65.7	88.3
1968	75.9	67.1	88.4	67.1	88.4
1969	78.0	68.6	87.9	68.6	87.9
1970	77.8	69.9	89.9	69.9	89.9
1971	79.6	71.7	90.1	71.7	90.1
1972	82.6	74.7	90.4	74.7	90.4
1973	85.6	77.6	90.6	77.6	90.6
1974	85.4	77.3	90.5	77.3	90.5
1975	86.0	77.9	90.6	77.9	90.6
1976	89.2	81.0	90.9	81.0	90.9
1977	93.5	85.1	91.0	85.1	91.0
1978	97.0	88.4	91.2	88.4	91.2
1979	99.4	90.7	91.3	90.7	91.3
1980	99.2	90.4	91.1	90.4	91.1
1981	99.0	90.2	91.1	90.2	91.1
1982	98.3	89.8	91.4	89.8	91.4
1983	102.2	93.6	91.6	96.0	94.0
1984	105.5	97.9	92.7	100.3	95.0
1985	107.7	100.0	92.9	102.4	95.1
1986	110.2	102.6	93.0	104.8	95.1
1987	113.3	105.8	93.4	107.9	95.2
1988	115.6	108.4	93.8	111.9	96.8

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[1] Includes paid employees and self-employed for all years.

[2] Monthly average for these years; all other years as of December.

Source: Social Security Annual Statistical Supplement, 1989, and Office of Research and Statistics.

TABLE 8.—CIVILIAN WAGES COVERED BY OASDI SYSTEM, 1946–89 [1]

[Dollars in billions]

Year	Total earnings	Earnings in covered employment		Total covered earnings	Percent of total earnings covered	Taxable earnings	Percent of covered earnings
		Employed	Self-employed				
1946	$148.3	$79.3	....	$79.3	53.5	$69.1	87.1
1947	158.6	92.4	....	92.4	58.3	78.4	84.8
1948	176.0	102.3	....	102.3	58.1	84.1	82.2
1949	170.6	100.0	....	100.0	58.6	81.8	81.8
1950	186.1	109.8	....	109.8	59.0	87.5	79.7
1951	215.6	132.5	$16.4	148.9	69.1	120.8	81.1
1952	230.1	143.5	16.4	159.9	69.5	128.6	80.5
1953	242.4	156.0	17.0	173.0	71.4	135.9	78.5
1954	240.7	155.1	16.8	171.9	71.4	133.5	77.7
1955	257.4	171.6	24.5	196.1	76.2	157.5	80.3
1956	276.0	188.5	28.3	216.8	78.6	170.7	78.8
1957	288.8	205.5	28.4	233.9	81.0	181.4	77.5
1958	292.8	208.0	28.5	236.5	80.8	180.7	76.4
1959	311.5	225.1	29.9	255.0	81.9	202.3	79.3
1960	324.9	236.0	29.2	265.2	81.6	207.0	78.1
1961	334.8	240.7	30.0	270.7	80.9	209.6	77.4
1962	355.9	257.7	31.3	289.0	81.2	219.1	75.8
1963	372.4	270.6	31.7	302.3	81.2	225.6	74.6
1964	398.2	290.9	33.6	324.5	81.5	236.4	72.8
1965	428.8	311.4	40.3	351.7	82.0	250.7	71.3
1966	469.8	346.7	44.0	390.7	83.2	312.5	80.0
1967	500.1	377.5	44.8	422.3	84.4	330.0	78.1
1968	547.4	413.6	46.4	460.0	84.0	375.8	81.7
1969	597.6	455.7	47.1	502.8	84.1	402.6	80.1
1970	631.7	483.6	48.0	531.6	85.2	415.6	78.2
1971	671.2	509.0	50.7	559.7	83.4	427.0	76.3
1972	737.0	563.3	54.6	617.9	83.8	484.1	78.3
1973	827.7	624.4	62.3	686.7	83.0	561.9	81.8
1974	891.0	681.6	65.2	746.7	83.8	636.8	85.3
1975	940.1	717.2	70.4	787.6	83.8	664.7	84.4
1976	1,037.2	797.2	76.8	874.7	84.3	737.7	84.3
1977	1,146.9	883.1	80.7	963.8	84.0	816.0	84.7
1978	1,295.8	1,002.2	93.7	1,095.9	84.6	917.8	83.7
1979	1,443.9	1,125.0	100.2	1,225.2	84.9	1,073.9	87.7
1980	1,552.6	1,230.5	97.7	1,328.2	85.5	1,175.8	88.5
1981	1,697.1	1,348.2	98.9	1,447.1	85.3	1,293.0	89.4
1982	1,761.7	1,425.1	98.6	1,523.7	86.5	1,363.9	89.5

TABLE 8.—CIVILIAN WAGES COVERED BY OASDI SYSTEM, 1946–89 [1]—Continued

[Dollars in billions]

Year	Total earnings	Earnings in covered employment		Total covered earnings	Percent of total earnings covered	Taxable earnings	Percent of covered earnings
		Employed	Self-employed				
1983	1,867.1	1,498.5	109.3	1,607.8	86.1	1,447.8	90.0
1984	2,073.3	1,671.5	117.2	1,788.7	86.3	1,608.2	89.9
1985 [2]	2,231.3	1,799.6	130.0	1,929.6	86.5	1,723.1	89.3
1986 [2]	2,376.8	1,919.5	139.0	2,058.5	86.6	1,842.9	89.5
1987 [2]	2,573.1	2,053.6	159.4	2,213.0	86.0	1,961.4	88.6
1988 [2]	2,785.3	2,228.8	182.4	2,411.2	86.6	2,098.1	87.0
1989 [2]	NA	2,420.8	198.3	2,619.1	NA	2,264.1	86.4

[1] Sum of wages and salaries and proprietors' income with inventory valuation and capital consumption adjustments, as estimated by the Bureau of Economic Analysis in the National Income and Produce Accounts.

[2] Preliminary.

NA=Not available.

Source: Social Security Bulletin, Annual Statistical Supplement, 1990, and Office of Research and Statistics.

TABLE 9.—SOCIAL SECURITY COVERAGE, 1987

[In millions]

Occupational group	Number of employees	Covered [1]	
		Number	Percent
Specifically exempt from OASI coverage: Federal civilian employees [2]	3.6	1.5	41.7
Voluntary coverage: State and local government	15.2	10.9	71.7
Mandatorily covered:			
Industry and commerce	88.3	88.1	99.8
Nonprofit [3]	7.3	7.2	98.6
Farm [3]	1.3	1.1	84.6
Domestic [3]	1.3	.5	38.5
Self-employed [3]	9.9	7.5	75.8

[1] Data on covered employment are estimated based upon class of worker of major job in which employed over the year 1987. The figures do not reflect turnover in jobs during the year.

[2] Federal employees who are temporary or who work for quasi-Federal agencies such as TVA are covered. The 1983 Social Security Amendments covered Federal employees hired after 1983, as well as all nonprofit employees, current and future.

[3] Mandatorily covered if special minimum coverage requirements met. Special minimum requirements for coverage generally relate to amount of wages earned—for example, domestic employees must received at least $50 from one employer during a calendar quarter for those wages to be covered.

Source: Office of Research and Statistics, Social Security Administration.

TABLE 10.—ESTIMATES OF SOCIAL SECURITY COVERAGE OF WORKERS WITH STATE AND LOCAL GOVERNMENT EMPLOYMENT AS THEIR MAJOR JOB IN 1987 [1]

[Based on 1-percent sample; numbers in thousands]

State	All workers	Covered workers	Percent covered
Total	15,204	10,895	72
Alabama	241	231	96
Alaska	51	22	42
Arizona	204	184	90
Arkansas	142	133	93
California	1,625	646	40
Colorado	207	50	24
Connecticut	194	122	63
Delaware	40	26	65
Florida	684	637	93
Georgia	400	348	87
Hawaii	70	44	63
Idaho	64	64	100
Illinois	646	352	55
Indiana	312	289	93
Iowa	213	209	98
Kansas	185	181	98
Kentucky	214	173	81
Louisiana	292	63	21
Maine	75	32	43
Maryland	286	257	90
Massachusetts	378	15	4
Michigan	582	545	94
Minnesota	292	216	74
Mississippi	161	156	97
Missouri	292	234	80
Montana	61	57	95
Nebraska	118	116	98
Nevada	56	4	7
New Hampshire	54	52	97
New Jersey	498	465	93
New Mexico	115	105	91
New York	1,373	1,197	87
North Carolina	424	396	93
North Dakota	57	52	91
Ohio	646	15	2
Oklahoma	205	190	93
Oregon	191	180	94

TABLE 10.—ESTIMATES OF SOCIAL SECURITY COVERAGE OF WORKERS WITH STATE AND LOCAL GOVERNMENT EMPLOYMENT AS THEIR MAJOR JOB IN 1987 [1]—Continued

[Based on 1-percent sample; numbers in thousands]

State	All workers	Covered workers	Percent covered
Pennsylvania	591	546	92
Rhode Island	46	37	79
South Carolina	232	225	97
South Dakota	52	50	97
Tennessee	264	232	88
Texas	1,003	518	52
Utah	117	107	91
Vermont	39	38	97
Virginia	373	351	94
Washington	327	264	81
West Virginia	113	107	95
Wisconsin	351	319	91
Wyoming	47	46	99

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[1] Major job is determined by type of employment of longest job (all workers) and of job with largest amount of covered wages (covered workers).

Source: Office of Research and Statistics, Social Security Administration.

TABLE 11.—COMPOSITION OF SOCIAL INSURANCE TAXES AND CONTRIBUTIONS: 1940 TO 1995

[In millions of dollars]

	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953
Employment taxes and contributions:														
Old-age and survivors insurance:														
Federal funds	54	2	−1	−1	−2	−3	−3	−5	−5	−8	−8	−10	−14	....
Trust funds (Off-Budget)	550	688	896	1,130	1,292	1,310	1,238	1,459	1,616	1,690	2,106	3,120	3,594	4,097
Railroad retirement/pension fund:														
Federal funds	1	23	29	−6	4	−24	−10	82	−201	−11	(1)	3	(1)	(1)
Trust funds	120	114	141	215	263	309	292	298	758	574	550	575	735	625
Total [2]	725	827	1,064	1,338	1,557	1,592	1,517	1,835	2,168	2,246	2,648	3,688	4,315	4,722
Unemployment insurance:														
Federal funds	111	103	126	167	190	194	190	196	206	220	224	231	257	274
Trust funds	904	953	1,172	1,310	1,454	1,375	1,126	1,133	1,138	985	1,108	1,378	1,455	1,401
Total	1,015	1,056	1,299	1,477	1,644	1,568	1,316	1,329	1,343	1,205	1,332	1,609	1,712	1,675
Other retirement contributions:														
Employees retirement—employee contributions	44	56	88	227	270	289	280	256	236	326	354	373	413	418
Contributions for non-Federal employees	1	1	-1	2	2	2	2	3	3	4	4	4	5	5
Total	45	57	89	229	272	291	282	259	239	330	358	377	418	423
Total social insurance taxes and contributions [2]	1,785	1,940	2,452	3,044	3,473	3,451	3,115	3,422	3,751	3,781	4,338	5,674	6,445	6,820

See footnotes at end of table.

TABLE 11.—COMPOSITION OF SOCIAL INSURANCE TAXES AND CONTRIBUTIONS: 1940 TO 1995—Continued

[In millions of dollars]

	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
Employment taxes and contributions:														
Old-age and survivors insurance:														
Federal funds	....	300	....	....	....	....	....	....	....	....	....	....	....	....
Trust funds (Off-Budget)	4,589	5,081	6,425	6,457	7,138	7,418	9,671	11,104	11,267	13,117	15,242	15,567	17,556	22,197
Disability insurance (Off-budget)	....	....	....	332	911	878	970	1,005	1,004	1,058	1,124	1,156	1,530	2,204
Hospital insurance	....	....	....	....	....	....	....	....	....	....	....	....	893	2,645
Railroad retirement/pension fund:														
Federal funds	(1)	(1)	(1)	....	....	....	....	....	....	....	....	....	....	....
Trust funds	603	600	634	616	575	525	607	571	564	572	593	636	683	776
Total [2]	5,192	5,981	7,059	7,405	8,624	8,821	11,248	12,679	12,835	14,746	16,959	17,358	20,662	27,823
Unemployment insurance:														
Federal funds	283	278	322	328	333	321	339	....	....	....	....	....	....	....
Trust funds	1,278	1,172	1,368	1,623	1,601	1,810	2,329	2,903	3,337	4,112	3,997	3,803	3,755	3,575
Total	1,561	1,449	1,690	1,950	1,933	2,131	2,667	2,903	3,337	4,112	3,997	3,803	3,755	3,575
Other retirement contributions:														
Employees retirement—employee contributions	450	426	566	636	673	760	758	845	863	933	992	1,064	1,111	1,202
Contributions for non-Federal employees	5	6	5	5	9	10	10	12	12	13	15	16	18	19
Total	455	431	571	642	682	770	768	857	875	946	1,007	1,081	1,129	1,221
Total social insurance taxes and contributions [2]	7,208	7,862	9,320	9,997	11,239	11,722	14,683	16,439	17,046	19,804	21,963	22,242	25,546	32,619

See footnotes at end of table.

TABLE 11.—COMPOSITION OF SOCIAL INSURANCE TAXES AND CONTRIBUTIONS: 1940 TO 1995—Continued

[In millions of dollars]

	1968	1969	1970	1971	1972	1973	1974	1975	1976	TQ	1977	1978	1979	1980
Employment taxes and contributions:														
Old-age and survivors insurance (Off-Budget)	22,265	25,484	29,396	31,354	35,132	40,703	47,778	55,207	58,703	15,886	68,032	73,141	83,410	96,581
Disabiality insurance (Off-Budget)	2,651	3,469	4,063	4,490	4,775	5,381	6,147	7,250	7,686	2,130	8,786	12,250	14,584	16,628
Hospital insurance	3,493	4,398	4,755	4,874	5,205	7,603	10,551	11,252	11,987	3,457	13,474	16,668	19,874	23,217
Railroad retirement/pension fund	814	885	919	980	1,008	1,189	1,411	1,489	1,525	328	1,908	1,822	2,190	2,323
Total [2]	29,224	34,236	39,133	41,699	46,120	54,876	65,888	75,199	79,901	21,801	92,199	103,881	120,058	138,748
Unemployment insurance	3,346	3,328	3,464	3,674	4,357	6,051	6,837	6,771	8,054	2,698	11,312	13,850	15,387	15,336
Other retirement contributions:														
Employees retirement—employee contributions	1,334	1,426	1,735	1,916	2,058	2,146	2,302	2,513	2,760	707	2,915	3,174	3,428	3,660
Contributions for non-Federal employees	20	24	29	37	39	41	45	52	54	13	59	62	66	59
Total	1,354	1,451	1,765	1,952	2,097	2,187	2,347	2,565	2,814	720	2,974	3,237	3,494	3,719
Total social insurance taxes and contributions [2]	33,923	39,015	44,362	47,325	52,574	63,115	75,071	84,534	90,769	25,219	106,485	120,967	138,939	157,803

See footnotes at end of table.

TABLE 11.—COMPOSITION OF SOCIAL INSURANCE TAXES AND CONTRIBUTIONS: 1940 TO 1995—Continued

[In millions of dollars]

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990 estimate	1991 estimate	1992 estimate	1993 estimate	1994 estimate	1995 estimate
Employment taxes and contributions:															
Old-age and survivors insurance (Off-Budget)	117,757	122,840	128,972	150,312	169,822	182,518	194,541	220,337	240,595	258,457	284,139	304,849	326,772	350,815	370,942
Disability insurance (Off-Budget)	12,418	20,626	18,348	15,763	16,348	17,711	18,861	21,154	23,071	26,977	30,402	32,542	35,175	37,584	39,753
Hospital insurance	30,340	34,301	35,641	40,262	44,871	51,335	55,992	59,859	65,396	69,324	77,122	82,479	89,042	95,075	100,451
Railroad retirement/pension fund	2,457	2,917	2,805	3,321	2,213	2,103	2,220	2,326	2,391	2,395	2,452	2,500	2,543	2,593	2,634
Railroad social security equivalent account					1,391	1,395	1,414	1,417	1,407	1,445	1,483	1,506	1,530	1,557	1,578
Total [2]	162,973	180,686	185,766	209,658	234,646	255,062	273,028	305,093	332,859	358,598	395,598	423,876	455,062	487,624	515,358
Unemployment insurance	15,763	16,600	18,799	25,138	25,758	24,098	25,575	24,584	22,011	22,029	21,054	21,035	21,558	22,088	22,300
Other retirement contributions:															
Employees retirement—employee contributions	3,908	4,140	4,351	4,494	4,672	4,645	4,613	4,537	4,428	4,617	4,641	4,650	4,642	4,655	4,639
Contributions for non-Federal employees	76	72	78	86	87	96	102	122	119	118	156	160	164	187	190
Total	3,984	4,212	4,429	4,580	4,759	4,742	4,715	4,658	4,546	4,734	4,797	4,810	4,806	4,842	4,830
Total social insurance taxes and contributions [2]	182,720	201,498	208,994	239,376	265,163	283,901	303,318	334,335	359,416	385,362	421,449	449,721	481,426	514,554	542,487

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[1] $500 thousand or less.

[2] On-budget and off-budget.

Note: Unless otherwise noted, all receipts shown in this table are trust funds and on-budget.

Source: Budget of the United States Government, fiscal year 1991.

Section 8. Unemployment Compensation Payroll Taxes

OVERVIEW

The Social Security Act of 1935 (P.L. 74-271) created the Federal-State unemployment compensation (UC) system. It has two main objectives: (1) to provide temporary and partial wage replacement to involuntarily unemployed workers who were recently employed; and (2) to help stabilize the economy during recessions. The U.S. Department of Labor oversees the system, but each State administers its own program. Because Federal law defines the District of Columbia, Puerto Rico, and the Virgin Islands as "States" for the purposes of unemployment compensation, there are 53 State programs.

The Federal Unemployment Tax Act of 1939 (P.L. 76-379) and titles III, IX, and XII of the Social Security Act form the framework of the system. The Federal Unemployment Tax Act (FUTA) currently imposes a 6.2 percent gross tax rate on the first $7,000 paid annually by covered employers to each employee. Employers in States with programs approved by the Federal Government and with no delinquent Federal loans may credit 5.4 percentage points against the 6.2 percent tax rate, making the minimum, net Federal unemployment tax rate 0.8 percent. This Federal revenue finances administration of the system, half of the Federal-State extended benefits program, and a Federal account for State loans. In theory, the States are supposed to use the revenue turned back to them by the 5.4 percent credit to finance their regular State programs and half of the Federal-State extended benefits program.

In 1976 Congress passed a temporary surtax of 0.2 percent of taxable wages to be added to the permanent FUTA tax rate (P.L. 94-566). Thus, the current 0.8 percent FUTA tax rate has two components: a permanent tax rate of 0.6 percent and a temporary surtax rate of 0.2 percent. Under the Omnibus Budget Reconciliation Act of 1987, the 0.2 percent surtax was extended for 3 years through 1990. This was done to build up reserves to be used to cover increased outlays for extended benefits and Federal loans to insolvent State UC programs resulting from a future recession. The 0.2 percent surtax was extended again, through 1995, by the Omnibus Budget Reconciliation Act of 1990.

TABLE 1.—UNEMPLOYMENT COMPENSATION PROGRAM STATISTICS

	Fiscal year—											
	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990 (estimated) [1]	1991 (projected) [1]
Total civilian unemployment rate (percent)	6.8	7.3	9.1	10.1	7.8	7.2	7.0	6.4	5.6	5.3	5.4	5.7
Insured unemployment rate (percent) [2]	3.8	3.5	4.4	4.3	2.9	2.9	2.8	2.5	2.2	2.1	2.3	2.4
Coverage (millions of individuals)	87.0	88.2	86.8	86.3	89.9	93.0	95.7	97.9	100.2	103.9	105.4	106.5
Average weekly benefit amount (current dollars)	96	102	114	120	119	122	129	135	140	145	152	161
In 1989 dollars [3]	147	142	148	149	142	140	145	147	147	145	NA	NA
State unemployment compensation:												
Beneficiaries (millions of individuals)	9.9	8.8	11.4	9.9	7.6	8.4	8.4	7.5	6.8	7.0	8.0	8.4
Regular benefit exhaustions (millions of individuals)	2.7	3.2	3.7	4.6	2.8	2.6	2.6	2.5	1.9	1.9	2.1	2.4
Regular benefits paid (billions of dollars)	12.95	13.46	19.34	20.84	13.3	14.3	15.6	15.0	13.2	13.5	16.7	18.2
Extended benefits (State share: billions of dollars)	.56	1.06	.93	1.21	.03	.03	.05	.04	([6])	([6])	([6])	([6])
State tax collections (billions of dollars)	11.91	12.37	12.77	14.43	19.04	20.01	18.8	19.1	18.3	17.3	16.2	16.2
State trust fund impact (income-outlays: billions of dollars)	−1.60	−2.15	−7.50	−7.62	+5.70	+5.65	+3.17	+4.11	+5.09	+6.58	+2.49	+1.07
Federal unemployment compensation accounts:												
Federal tax collections (billions of dollars) [4]	3.19	3.26	3.18	3.58	5.02	4.44	4.08	5.08	5.50	4.75	5.27	4.42
Outlays: Federal extended benefits share plus Federal supplemental benefits (billions of dollars)	.56	1.06	.97	6.80	3.01	.03	.05	.04	([6])	([6])	([6])	([6])
Administrative costs (billions of dollars):												
Unemployment Insurance Service	1.15	1.32	1.42	1.70	1.58	1.58	1.57	1.56	1.61	1.71	1.80	2.02
Employment Service [5]	.73	.73	.68	.72	.76	.92	.93	.90	.95	1.00	1.00	1.00
Total administrative costs [7]	1.88	2.05	2.10	2.42	2.31	2.50	2.50	2.46	2.56	2.72	2.80	3.02

[1] Based on President's Fiscal Year 1991 Midsession Budget Review. [2] The average number of workers claiming State unemployment compensation benefits as a percent of all workers covered. [3] Adjusted using CPI–X1. [4] Net of reduced credits. [5] Includes Bureau of Labor Statistics and Veterans' Employment Service. [6] Less than $5 million. [7] Detail may not add to total because of rounding.

Sources: Office of Research, Legislation and Program Policies/ETA/UIS/DOL, Division of Actuarial Services, and U.S. Budget Appendixes.

FUTA generally determines covered employment. FUTA also imposes certain requirements on the State programs, but the States generally determine individual qualification requirements, disqualification provisions, eligibility, weekly benefit amounts, potential weeks of benefits, and the State tax structure used to finance all of the regular State benefits and the State half of the extended benefits. Regular State benefits run up to 26 weeks and extended benefits last for up to 13 additional weeks.

The Social Security Act provides for the administrative framework. Title III authorizes Federal grants to the States for administration of the State UC laws. Title IX authorizes the various components of the Federal Unemployment Trust Fund. Title XII authorizes advances or loans to insolvent State UC programs.

The Unemployment Trust Fund

The Federal unified budget accounts for all Federal-State UC outlays and taxes in the Federal Unemployment Trust Fund. The Unemployment Trust Fund has 59 accounts. The accounts consist of 53 State UC program accounts, the Railroad Unemployment Insurance Account, the Railroad Administration Account, and four Federal accounts. The status of each State program account at the beginning of fiscal year 1991 is shown in table 2.

The economic expansion has improved the fiscal condition of the unemployment trust fund. State debt declined from $0.8 billion at the beginning of fiscal year 1990 to $0.6 billion at the beginning of fiscal year 1991. Michigan is the only State with a Federal loan outstanding. Balances as a percent of total wages in a State declined in 12 State programs over the year. Balances as a percent of total wages in a State program ranged from 0.3 percent in Connecticut to 9.3 percent in Puerto Rico. In the aggregate, reserves were at 2.0 percent of wages paid in the United States.

The four Federal accounts in the trust fund are: (1) the Employment Security Administration Account (ESAA), which funds administration; (2) the Extended Unemployment Compensation Account (EUCA), which funds the Federal half of the Federal-State extended benefits program; (3) the Federal Unemployment Account (FUA), which funds loans to insolvent State UC programs; and (4) the Federal Employee Compensation Account (FECA), which funds benefits for Federal civilian and military personnel authorized under 5 U.S.C. 85. Federal unemployment taxes finance the ESAA, EUCA, and FUA, but general revenues finance the FECA. Present law authorizes interest-bearing loans to ESAA, EUCA, and FUA from the general fund.

TABLE 2.—STATE UNEMPLOYMENT TRUST FUND ACCOUNT BALANCES AT THE BEGINNING OF FISCAL YEAR 1991

[Dollars in millions]

State	1991 beginning balance	Minus loans outstanding at beginning of 1991	1991 adjusted beginning balances	Adjusted 1991 beginning balance as a percent of total wages in State [1]
Alabama	$648			2.7
Alaska	217			4.8
Arizona	507			2.1
Arkansas	141			1.1
California	5,716			2.2
Colorado	295			1.2
Connecticut	127			.3
Delaware	231			3.5
District of Columbia	78			.8
Florida	2,066			2.4
Georgia	1,093			2.1
Hawaii	393			4.2
Idaho	243			4.7
Illinois	1,510			1.5
Indiana	870			2.1
Iowa	567			3.4
Kansas	539			3.0
Kentucky	427			2.0
Louisiana	435			1.9
Maine	194			2.5
Maryland	563			1.5
Massachusetts	549			.9
Michigan	1,033	603	430	.6
Minnesota	401			1.1
Mississippi	391			3.3
Missouri	338			.9
Montana	89			2.1
Nebraska	142			1.5
Nevada	352			3.3
New Hampshire	187			2.0
New Jersey	2,921			3.6
New Mexico	198			2.7
New York	2,808			1.7
North Carolina	1,530			3.2
North Dakota	51			1.8

TABLE 2.—STATE UNEMPLOYMENT TRUST FUND ACCOUNT BALANCES AT THE BEGINNING OF FISCAL YEAR 1991—Continued

[Dollars in millions]

State	1991 beginning balance	Minus loans outstanding at beginning of 1991	1991 adjusted beginning balances	Adjusted 1991 beginning balance as a percent of total wages in State [1]
Ohio	921			1.1
Oklahoma	391			2.2
Oregon	959			5.0
Pennsylvania	1,802			2.0
Puerto Rico	666			9.3
Rhode Island	276			3.6
South Carolina	494			2.2
South Dakota	48			1.6
Tennessee	696			2.0
Texas	1,303			1.1
Utah	280			2.9
Vermont	211			5.5
Virginia	747			1.6
Virgin Islands	35			7.2
Washington	1,579			4.6
West Virginia	160			1.8
Wisconsin	1,186			3.4
Wyoming	76			3.0
U.S. total [2]	39,680	603	39,077	2.0

[1] Total wages in the State for the 12 months ending March 31, 1990.

[2] Figures may not correspond exactly with U.S. Treasury data because of rounding.

Table 3 summarizes the financial status of the Federal accounts at the beginning of fiscal year 1991. A debt of $1.9 billion owed the general fund by FUA a year earlier has been repaid.

TABLE 3.—BALANCES IN THE FEDERAL ACCOUNTS OF THE UNEMPLOYMENT TRUST FUND AT THE BEGINNING OF FISCAL YEAR 1991

[In millions of dollars]

Accounts	Beginning balance	Minus general fund advances	Net beginning balance
Employment security administration	1,076	0	1,076
Extended unemployment compensation	7,192	0	7,192
Federal unemployment (State loans)	3,173	0	3,173
Federal employee compensation	106	0	106

Source: U.S. Department of the Treasury.

FINANCING

The Federal Unemployment Tax

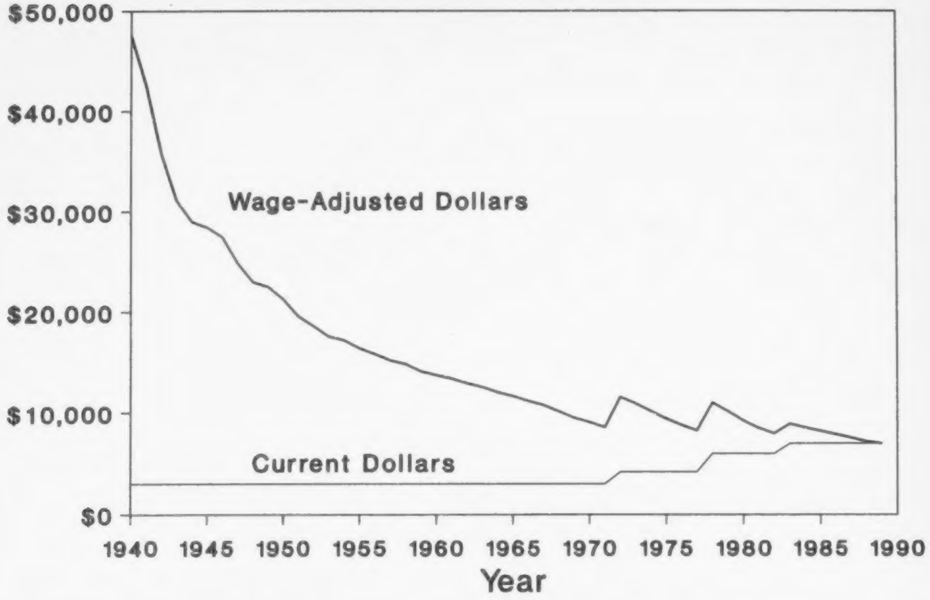
Total unemployment taxes on employers for a full-time, full-year worker earning the average wage in covered employment in 1989 is estimated to have averaged $178 or 9 cents per hour. The Federal portion is $56 or 3 cents per hour and the average State portion is about $122 or 6 cents per hour. Employer taxes will vary substantially, however, depending on the State taxable wage base, State tax rates, and Federal credits.

FUTA currently imposes a minimum, net Federal payroll tax on employers of 0.8 percent on the first $7,000 paid annually to each employee. The gross FUTA tax rate is 6.2 percent, but employers in States meeting certain Federal requirements and having no delinquent Federal loans are eligible for a 5.4 percent credit, making the minimum, net Federal tax rate 0.8 percent.

Chart 1 shows the historical trend in the Federal taxable wage base from 1940 to 1988. The wage base was held constant at $3,000 until 1971 and has been increased three times since then. The chart also shows the erosion of the taxable wage base during the 1950's and 1960's relative to wage growth. If the taxable wage base had been indexed for wage growth since 1940, the current wage base would be over $46,000 instead of $7,000.

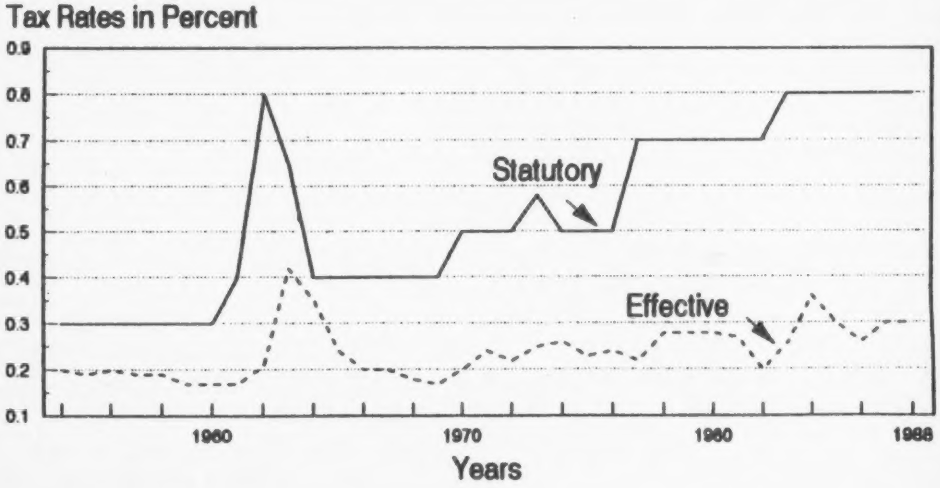
Chart 2 depicts the historical trends in the statutory and effective Federal unemployment tax rates. The effective tax rate is FUTA revenue as a percent of total covered wages. The gap between the statutory and effective tax rates has been growing. This has occurred despite a constant 0.8 percent statutory rate since 1983 because the fraction of total covered wages subject to the FUTA tax has dropped to about one-third. This trend resulted from the Federal taxable wage base remaining constant at $7,000 since 1983 while total covered wages grew by over 50 percent.

CHART 1.—FEDERAL UC TAXABLE ANNUAL WAGE BASE IN CURRENT AND WAGE-ADJUSTED DOLLARS, 1940–89



Source: Chart prepared by CRS based on data from DOL.

CHART 2.—HISTORY OF FEDERAL UNEMPLOYMENT TAX RATE, 1954–88



The State Unemployment Taxes

The States finance their programs and half of the Extended Benefits program with employer payroll taxes imposed on at least the first $7,000 paid annually to each employee.[1] States generally adopt a taxable wage base at least as high as the Federal level because they would lose the 5.4 percent credit to employers on the difference between the Federal taxable wage base and State taxable wage base otherwise. Table 4 shows that, as of September 1990, 37 States had taxable wage bases higher than the Federal taxable wage base, ranging up to $21,300 in Alaska.

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[1] Alaska, New Jersey, and Pennsylvania also tax employees.

Although the standard State tax rate is 5.4 percent, State tax rates based on unemployment experience can range from zero on some employers in 14 States up to a maximum as high as 10 percent in 3 States.

Estimated national average State tax rates on taxable wages and total wages for 1989 were 2.2 and 0.8 percent, respectively. Estimated average State tax rates on taxable wages ranged from 0.6 percent in South Dakota to 5.4 percent in Puerto Rico. Estimated average State tax rates on total wages varied from 0.3 percent in 5 States to 3.4 percent in Alaska.

TABLE 4.—STATE UNEMPLOYMENT TAX BASES AND RATES

State	1990 tax base	1990 experience rates [1]		Estimated 1989 average tax rates as a percent of—	
		Minimum	Maximum	Taxable wages	All wages
U.S. average	(2)	NA	NA	2.2	0.8
Alabama	$8,000	.5	5.4	1.4	.6
Alaska	21,300	1.0	6.5	4.8	3.4
Arizona	(2)	.1	5.4	1.2	.4
Arkansas	7,800	0	6.0	2.1	1.0
California	(2)	.1	5.4	2.2	.7
Colorado	10,000	0	5.4	1.8	.8
Connecticut	7,100	.5	6.4	1.8	.5
Delaware	8,500	.1	8.0	2.3	1.0
District of Columbia	8,000	.1	5.4	1.6	.5
Florida	(2)	.1	5.4	.9	.3
Georgia	8,500	.01	8.64	1.4	.5
Hawaii	19,900	0	5.4	1.3	.9
Idaho	17,400	.1	6.8	2.1	1.4
Illinois	9,000	.2	6.7	2.9	1.0
Indiana	(2)	.02	5.4	1.4	.5
Iowa	11,900	0	9.0	2.0	1.0
Kansas	8,000	.025	5.4	2.5	1.0
Kentucky	8,000	.3	10.0	2.1	.9
Louisiana	8,500	.3	6.0	2.8	.9
Maine	(2)	.5	6.5	2.4	1.0
Maryland	(2)	.1	7.6	1.2	.3
Massachusetts	(2)	1.2	7.2	2.1	.7
Michigan	9,500	0	10.0	3.8	1.4
Minnesota	12,900	.1	9.0	2.1	1.0
Mississippi	(2)	.1	6.4	1.2	.5
Missouri	7,500	0	7.8	1.5	.5
Montana	13,200	0	6.4	1.5	1.0
Nebraska	(2)	.1	5.4	1.3	.5
Nevada	13,300	.25	5.4	1.4	.8
New Hampshire	(2)	.01	6.5	.8	.3
New Jersey	13,900	.3	7.0	2.1	.9
New Mexico	11,500	.1	5.4	1.8	1.0
New York	(2)	0	6.4	1.9	.5
North Carolina	11,100	.01	5.7	.9	.5
North Dakota	11,500	.1	5.4	2.3	1.2
Ohio	8,000	.1	6.5	2.7	1.0
Oklahoma	9,500	.1	6.2	2.4	1.1

TABLE 4.—STATE UNEMPLOYMENT TAX BASES AND RATES—Continued

State	1990 tax base	1990 experience rates [1]		Estimated 1989 average tax rates as a percent of—	
		Minimum	Maximum	Taxable wages	All wages
Oregon	16,000	.9	5.4	3.1	1.9
Pennsylvania	8,000	.3	9.2	3.7	1.3
Puerto Rico	(2)	(3)	(3)	5.4	3.0
Rhode Island	13,800	.8	8.4	2.6	1.4
South Carolina	(2)	.19	5.4	1.9	.8
South Dakota	(2)	0	9.5	.6	.3
Tennessee	(2)	.15	10.0	1.7	.6
Texas	9,000	0	6.0	2.9	1.1
Utah	14,000	.1	8.0	1.6	.9
Vermont	8,000	.4	8.4	3.1	1.3
Virginia	(2)	0	6.2	.9	.3
Virgin Islands	17,000	.1	9.0	1.7	1.4
Washington	16,200	.48	5.4	2.7	1.6
West Virginia	8,000	0	7.5	2.2	.9
Wisconsin	10,500	0	8.9	3.1	1.4
Wyoming	10,400	0	8.5	3.3	1.6

[1] Actual rates could be higher if State has an additional amount.

[2] The 1990 tax base is $7,000.

[3] Puerto Rico is not experience-rated. The rate in Puerto Rico is 5.4% of $7,000.

NA-Means not available.

Note.—This table shows the State unemployment tax levels. It does not include the Federal unemployment taxes.

Source: Department of Labor (based on estimates by State agencies).

Table 5 shows employment and wages by State. On average, States apply unemployment taxes to only one-third of wages paid by employers. This proportion varies from a low of 0.22 in the District of Columbia to a high of 0.65 in Montana.

TABLE 5.—12-MONTH AVERAGE EMPLOYMENT AND WAGES COVERED BY UNEMPLOYMENT COMPENSATION FOR PERIOD ENDING DECEMBER 1989

State	Covered employment (thousands)	Total wages (millions)	Taxable wages (millions)	Ratio of taxable wages to total wages	Average weekly wages
United States	104,802	$2,337,169	$739,147	0.32	$429
Alabama	1,502	28,802	9,983	.35	369
Alaska	204	6,039	2,966	.49	568
Arizona	1,423	29,390	8,812	.30	397
Arkansas	853	14,634	5,372	.37	330
California	12,652	314,131	82,936	.26	477
Colorado	1,407	30,531	11,290	.37	417
Connecticut	1,634	44,876	10,722	.24	528
Delaware	334	7,752	2,340	.30	446
District of Columbia	449	13,547	3,023	.22	581
Florida	5,163	102,613	33,184	.32	382
Georgia	2,804	59,420	18,598	.31	408
Hawaii	477	10,071	5,517	.55	406
Idaho	353	6,309	3,405	.54	344
Illinois	5,012	120,910	36,984	.31	464
Indiana	2,367	48,972	14,414	.29	398
Iowa	1,139	20,802	8,645	.42	351
Kansas	1,007	19,421	8,296	.43	371
Kentucky	1,331	25,064	8,492	.34	362
Louisiana	1,457	28,490	9,764	.34	376
Maine	516	9,728	3,075	.32	363
Maryland	1,976	44,995	12,277	.27	437
Massachusetts	2,984	75,060	21,580	.29	484
Michigan	3,774	93,593	28,127	.30	477
Minnesota	2,018	44,537	17,569	.39	322
Mississippi	870	14,580	5,126	.35	322
Missouri	2,186	45,181	12,768	.28	397
Montana	266	4,471	2,911	.65	323
Nebraska	672	11,760	3,593	.31	336
Nevada	568	12,026	6,031	.50	407
New Hampshire	509	10,928	3,214	.29	413
New Jersey	3,538	94,627	35,718	.38	514
New Mexico	509	9,261	3,852	.42	350
New York	7,969	217,425	47,695	.22	525
North Carolina	2,979	57,154	24,622	.43	369
North Dakota	230	3,836	1,513	.39	321
Ohio	4,614	100,905	30,006	.30	421

TABLE 5.—12-MONTH AVERAGE EMPLOYMENT AND WAGES COVERED BY UNEMPLOYMENT COMPENSATION FOR PERIOD ENDING DECEMBER 1989—Continued

State	Covered employment (thousands)	Total wages (millions)	Taxable wages (millions)	Ratio of taxable wages to total wages	Average weekly wages
Oklahoma	1,088	20,848	7,836	.38	368
Oregon	1,159	23,267	11,329	.49	386
Pennsylvania	4,875	108,002	31,646	.29	426
Puerto Rico	838	10,313	3,955	.38	237
Rhode Island	449	9,404	4,003	.43	403
South Carolina	1,426	26,426	8,740	.33	356
South Dakota	250	3,854	1,287	.33	296
Tennessee	2,057	39,960	12,678	.32	374
Texas	6,542	140,784	48,348	.34	414
Utah	622	11,771	5,327	.45	364
Vermont	251	4,847	1,610	.33	372
Virginia	2,627	55,984	16,538	.30	410
Virgin Islands	42	778	364	.47	359
Washington	1,946	41,675	20,113	.48	412
West Virginia	572	11,194	3,537	.32	376
Wisconsin	2,131	42,858	16,185	.38	387
Wyoming	177	3,360	1,235	.37	364

Source: Department of Labor, UI Data Summary, 2d Quarter Calendar year 1990, September 1990.

ADMINISTRATIVE FINANCING AND ALLOCATION

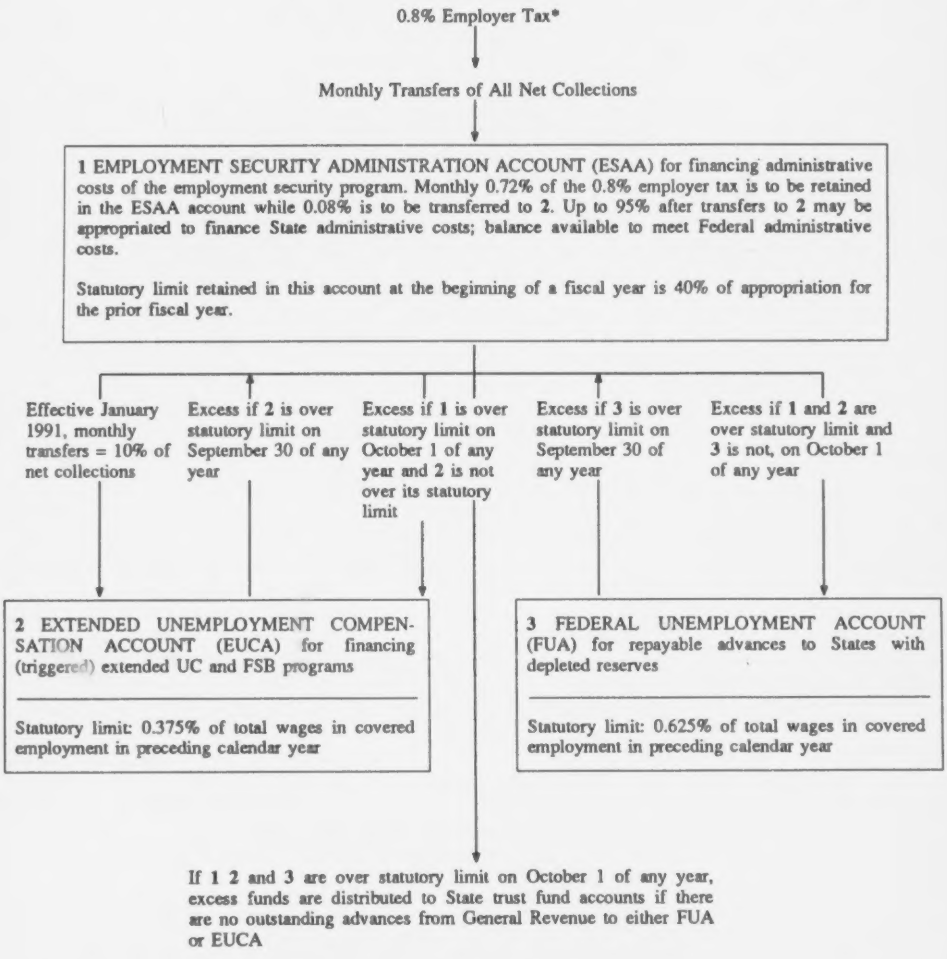
State unemployment insurance administrative expenses are federally financed. A portion of revenue from the FUTA tax is designated for administration and to maintain a system of public employment offices.

FUTA revenue flows into three Federal accounts in the Unemployment Trust Fund: (1) the Employment Security Administration Account (ESAA), (2) the Extended Unemployment Compensation Account (EUCA), and (3) the Federal Unemployment Account (FUA). Authorized by title IX of the Social Security Act, ESAA finances administrative costs associated with Federal and State unemployment compensation and employment services.

Under current law, 90 percent of FUTA revenue is allocated to ESAA and 10 percent to EUCA. FUA receives funds indirectly as they overflow from ESAA and EUCA. Funds for administration are limited to 95 percent of the estimated annual revenue that is expected to flow to ESAA from the Federal Unemployment tax. Funds for administration may be augmented by three-eighths of the amount in ESAA at the beginning of the fiscal year, or $150 million, whichever is less, if the rate of insured unemployment is at least 15 percent higher than it was over the corresponding calendar quarter in the immediately preceding year.

CHART 3.—FLOW OF FUTA UNDER EXISTING FEDERAL STATUTES

Flow of FUTA Funds Under Existing Federal Statutes



0.8% Employer Tax*

Monthly Transfers of All Net Collections

1 EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT (ESAA) for financing administrative costs of the employment security program. Monthly 0.72% of the 0.8% employer tax is to be retained in the ESAA account while 0.08% is to be transferred to 2. Up to 95% after transfers to 2 may be appropriated to finance State administrative costs; balance available to meet Federal administrative costs.

Statutory limit retained in this account at the beginning of a fiscal year is 40% of appropriation for the prior fiscal year.

Effective January 1991, monthly transfers = 10% of net collections

Excess if 2 is over statutory limit on September 30 of any year

Excess if 1 is over statutory limit on October 1 of any year and 2 is not over its statutory limit

Excess if 3 is over statutory limit on September 30 of any year

Excess if 1 and 2 are over statutory limit and 3 is not, on October 1 of any year

2 EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT (EUCA) for financing (triggered) extended UC and FSB programs

Statutory limit: 0.375% of total wages in covered employment in preceding calendar year

3 FEDERAL UNEMPLOYMENT ACCOUNT (FUA) for repayable advances to States with depleted reserves

Statutory limit: 0.625% of total wages in covered employment in preceding calendar year

If 1 2 and 3 are over statutory limit on October 1 of any year, excess funds are distributed to State trust fund accounts if there are no outstanding advances from General Revenue to either FUA or EUCA

*Effective tax, after 5.4 percent (2.7% prior to 1985) is offset against 6.2 percent (3.5% prior to 1985) Federal unemployment tax. Legislation enacted in 1990 extends the 0.2% temporary FUTA tax through 1995, resulting in the 0.8% effective tax rate.

SOURCE: National Foundation for Unemployment Compensation and Workers' Compensation, "Highlights of State Unemployment Compensation Laws," January 1991.

Title III of the Social Security Act authorizes payment to each State with an approved unemployment insurance law such amounts as are deemed necessary for the proper and efficient administration of such law during the fiscal year. Allocations are based on: (1) the population of the State; (2) an estimate of the number of persons covered by the State unemployment insurance law; (3) an estimate of the cost of proper and efficient administration of such law; and (4) such other factors as the Secretary of Labor finds relevant.

Subject to the limit of available resources, the allocation of State grants for administration is the sum of resources for two major areas, the Unemployment Insurance Service (UI) and the Employment Service (ES). Each area has its own allocation methodology, subject to general constraints set forth in the Social Security Act and the Wagner-Peyser Act.

FINANCIAL CONDITION OF THE UNEMPLOYMENT TRUST FUND

Federal Accounts

Currently there is a shortfall of nearly $10 billion in the Federal Accounts. Although the Employment Security Administration Account (ESAA) has reached its ceiling of $1.2 billion and the Extended Unemployment Compensation Account (EUCA) has reached its ceiling of $7.2 billion, the Federal Unemployment Account (FUA) falls short of its ceiling by $9.8 billion. The ceilings in these accounts were set by the Omnibus Budget Reconciliation Act of 1987 to reflect the amount of funds that would be needed to cover increased outlays from these accounts resulting from a future recession.

Under the Administration's midsession budget review assumptions, FUA would continue to fall short of its ceiling throughout the 5-year projection period. By the end of fiscal year 1995, FUA would still be short by about $7.5 billion.

State Accounts

The State accounts have recovered substantially from the financial problems that began in the 1970s and continued through the 1980s. Table 6 shows that the State accounts currently hold about $39 billion, which represents a remarkable level given the negative balance of nearly $3 billion in 1982.

Although the 1990 balances in the State accounts are well above the $12 billion of 1970 before serious financial problems began for most States, State reserve ratios paint a different picture. Table 7 shows State reserve ratios, trust fund balances as a percent of total wages paid in the respective States during the year. The column in the right margin shows that State balances are only at 65 percent of their reserve status in 1970. This suggests that States might be at risk of serious financial problems if the U.S. economy experiences a major recession.

For the second quarter of 1990, table 8 arrays the States by their "High-Cost Multiples," the ratio of their reserve ratios to their highest cost rates. Their highest cost rates are determined by choosing the highest ratio of costs to total covered wages paid in a prior year. States with high-cost multiples of at least 1.0 could withstand a recession as bad as the worst one they have experienced previously. States with high-cost multiples below 1.0 are at significant risk of insolvency during such a recession.

Twenty-nine States had high-cost multiples below 1.0. Eighteen States had high-cost multiples below 0.8, and nine States were below 0.5. Based on this measure, those States in the worst financial shape were Connecticut, Ohio, Massachusetts, Michigan, Arkansas, West Virginia, the District of Columbia, Missouri, and Minnesota.

TABLE 6.—FINANCIAL CONDITION OF STATE UNEMPLOYMENT COMPENSATION PROGRAMS—NET RESERVES

[In millions of dollars]

	1970	1975	1979	1982	1990 [1]
Total	11,903	3,070	8,583	(2,645)	38,892
Alabama	130	(2)	118	9	637
Alaska	35	75	65	134	190
Arizona	119	67	226	215	511
Arkansas	49	2	24	(77)	133
California	1,219	546	2,738	2,708	5,712
Colorado	91	47	137	(4)	273
Connecticut	252	(232)	(267)	(252)	189
Delaware	22	0	(30)	(35)	225
D.C.	74	(3)	(44)	(57)	83
Florida	268	80	665	865	2,094
Georgia	340	268	447	397	1,072
Hawaii	44	5	79	108	373
Idaho	46	54	93	29	228
Illinois	401	(31)	(460)	(2,069)	1,424
Indiana	326	198	418	63	835
Iowa	125	63	155	(63)	536
Kansas	84	135	238	142	516
Kentucky	175	137	159	(121)	411
Louisiana	146	141	238	(102)	397
Maine	39	2	0	(4)	191
Maryland	213	29	273	220	579
Massachusetts	378	(99)	132	436	682
Michigan	491	(286)	112	(2,186)	987
Minnesota	119	(35)	70	(288)	344
Mississippi	85	90	231	257	388
Missouri	264	95	296	(64)	348
Montana	26	8	16	9	80
Nebraska	55	29	81	72	135
Nevada	39	5	95	122	339
New Hampshire	55	29	82	75	193
New Jersey	448	(348)	(507)	(423)	2,841
New Mexico	40	33	80	101	190
New York	1,693	574	403	819	2,971
North Carolina	414	342	564	400	1,503
North Dakota	13	22	21	11	46
Ohio	693	294	513	(1,658)	858
Oklahoma	55	27	177	108	370
Oregon	122	24	320	161	886
Pennsylvania	852	(86)	(1,091)	(2,145)	1,755
Puerto Rico	85	(26)	(33)	(47)	634
Rhode Island	75	(41)	(96)	(76)	276
South Carolina	166	95	195	50	471
South Dakota	8	20	16	9	46
Tennessee	212	200	264	15	681
Texas	337	231	396	142	1,228

TABLE 6.—FINANCIAL CONDITION OF STATE UNEMPLOYMENT COMPENSATION PROGRAMS—NET RESERVES—Continued

[In millions of dollars]

	1970	1975	1979	1982	1990 [1]
Utah	51	32	67	10	259
Vermont	26	(25)	(21)	(27)	204
Virginia	218	122	103	14	734
Virgin Islands	NA	NA	(7)	46	32
Washington	226	(67)	297	(3)	1,472
West Virginia	108	78	39	150	156
Wisconsin	322	121	465	(144)	1,107
Wyoming	19	31	69	(413)	66

[1] Data are for the second quarter of calendar year 1990.

Source: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, Division of Actuarial Services, UI Data Summary, 2d quarter, CY 90, September 1990. U.S. Department of Labor, Employment and Training Administration on Unemployment Insurance Financial Handbook Data.

TABLE 7.—STATE UNEMPLOYMENT COMPENSATION PROGRAM—RESERVE RATIOS

[Percent]

	1970	1975	1979	1982	1990 [1]	Ratio of 1990/1970
U.S. total	3.11	0.53	0.91	−0.24	2.03	65
Alabama	2.96	0	.98	.06	2.68	91
Alaska	5.51	3.07	2.78	2.94	4.27	77
Arizona	4.25	1.35	2.36	1.66	2.15	51
Arkansas	2.26	.04	.37	0	1.10	49
California	2.91	.88	2.51	1.83	2.19	75
Colorado	2.54	.70	1.11	0	1.08	43
Connecticut	.08	0	0	0	.50	625
Delaware	1.72	0	0	0	3.48	202
D.C.	3.22	0	0	0	.81	25
Florida	2.60	.42	2.13	1.89	2.46	95
Georgia	4.74	2.28	2.28	1.49	2.13	45
Hawaii	2.90	.23	2.24	2.43	4.06	140
Idaho	5.16	3.21	3.20	.85	4.51	87
Illinois	1.55	0	0	0	1.40	90
Indiana	3.13	1.31	1.69	.23	2.02	65
Iowa	3.19	.96	1.45	0	3.26	102
Kansas	3.00	2.65	2.75	1.29	2.90	97
Kentucky	4.21	1.95	1.36	0	2.00	48
Louisiana	2.91	1.58	1.51	0	1.72	59
Maine	2.86	0	0	0	2.46	86
Maryland	3.26	.29	1.83	1.11	1.59	49
Massachusetts	3.04	0	0	1.23	1.08	36
Michigan	2.49	0	.25	0	1.29	52
Minnesota	1.76	0	.41	0	.96	55
Mississippi	3.87	2.25	3.47	3.12	3.29	85
Missouri	3.03	.75	1.47	0	.93	31
Montana	3.33	.57	0	.27	1.91	57
Nebraska	2.87	.84	1.58	1.14	1.47	51
Nevada	3.20	.22	2.31	2.02	3.24	101
New Hampshire	4.62	1.56	2.42	1.60	2.11	46
New Jersey	2.76	0	0	0	3.59	130
New Mexico	3.45	1.61	2.14	1.98	2.64	77
New York	3.76	1.02	.51	.78	1.77	47
North Carolina	5.22	2.71	2.71	1.52	3.16	61
North Dakota	2.53	1.94	1.13	.46	1.64	65
Ohio	3.01	.91	1.02	0	1.03	34
Oklahoma	1.69	.46	1.56	.62	2.10	124
Oregon	3.39	.40	3.00	1.37	4.76	140
Pennsylvania	3.53	0	0	0	2.02	57
Puerto Rico	4.90	0	0	0	8.90	182
Rhode Island	4.34	0	0	0	3.67	85
South Carolina	4.61	1.61	1.96	.40	2.16	47
South Dakota	3.81	1.96	.95	.43	1.56	41
Tennessee	3.57	1.95	1.63	.08	2.03	57

TABLE 7.—STATE UNEMPLOYMENT COMPENSATION PROGRAM—RESERVE RATIOS—Continued

[Percent]

	1970	1975	1979	1982	1990 [1]	Ratio of 1990/ 1970
Texas	1.90	.71	.65	0	1.03	54
Utah	3.55	1.22	1.43	.16	2.74	77
Vermont	3.72	0	0	0	5.36	144
Virginia	3.41	1.08	.56	.06	1.56	46
Virgin Islands	0	0	0	0	6.80	NC
Washington	3.73	0	1.66	.70	4.42	118
West Virginia	4.07	1.70	.56	0	1.76	43
Wisconsin	4.29	.99	2.37	0	3.19	74
Wyoming	4.29	3.02	3.15	1.44	2.61	61

[1] Data are for the second quarter of calendar year 1990.

Sources: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, Division of Actuarial Services, UI Data Summary, 2d quarter, CY 90, September 1990. U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Financial Handbook Data.

TABLE 8.—STATE UNEMPLOYMENT COMPENSATION PROGRAM HIGH-COST MULTIPLES—SECOND QUARTER OF 1990

	High-cost multiple		High-cost multiple	Rank
United States	0.90			
Alabama	1.24	Connecticut	.15	53
Alaska	.99	Ohio	.33	52
Arizona	.87	Massachusetts	.34	51
Arkansas	.41	Michigan	.35	50
California	.94	Arkansas	.41	49
Colorado	.86	West Virginia	.44	48
Connecticut	.15	D.C	.44	47
Delaware	1.29	Missouri	.47	46
D.C	.44	Minnesota	.49	45
Florida	1.34	Illinois	.52	44
Georgia	1.00	Lousiana	.56	43
Hawaii	1.53	Pennsylvania	.60	42
Idaho	1.42	Montana	.63	41
Illinois	.52	North Dakota	.70	40
Indiana	1.13	New York	.71	39
Iowa	1.25	Kentucky	.72	38
Kansas	1.47	Maryland	.72	37
Kentucky	.72	South Carolina	.75	36
Louisiana	.56	Rhode Island	.84	35
Maine	.87	New Hampshire	.84	34
Maryland	.72	Colorado	.86	33
Massachusetts	.34	Wyoming	.86	32
Michigan	.35	Arizona	.87	31
Minnesota	.49	Maine	.87	30
Mississippi	1.67	Texas	.91	29
Missouri	.47	Tennessee	.93	28
Montana	.63	California	.94	27
Nebraska	.98	Nebraska	.98	26
Nevada	1.18	Alaska	.99	25
New Hampshire	.84	Georgia	1.00	24
New Jersey	1.08	Washington	1.05	23
New Mexico	1.61	New Jersey	1.08	22
New York	.71	Indiana	1.13	21
North Carolina	1.23	Nevada	1.18	20
North Dakota	.70	Virginia	1.19	19
Ohio	.33	North Carolina	1.23	18
Oklahoma	1.54	Alabama	1.24	17
Oregon	1.48	Wisconsin	1.24	16
Pennsylvania	.60	Iowa	1.25	15
Puerto Rico	2.11	Delaware	1.29	14
Rhode Island	.84	Florida	1.34	13
South Carolina	.75	Utah	1.36	12
South Dakota	1.50	Idaho	1.42	11
Tennessee	.93	Kansas	1.47	10
Texas	.91	Oregon	1.48	9
Utah	1.36	South Dakota	1.50	8

TABLE 8.—STATE UNEMPLOYMENT COMPENSATION PROGRAM HIGH-COST MULTIPLES—SECOND QUARTER OF 1990—Continued

	High-cost multiple		High-cost multiple	Rank
Vermont	1.65	Hawaii	1.53	7
Virginia	1.19	Oklahoma	1.54	6
Virgin Islands	2.98	New Mexico	1.61	5
Washington	1.05	Vermont	1.65	4
West Virginia	.44	Mississippi	1.67	3
Wisconsin	1.24	Puerto Rico	2.11	2
Wyoming	.86	Virgin Islands	2.98	1

Source: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, Division of Actuarial Services, UI Data Summary, 2d quarter, CY 1990, September 1990.

RECENT MAJOR LEGISLATION

Major Federal laws passed by recent sessions of Congress relating to the unemployment compensation program include:

(1) The Employment Security Amendments of 1970 (P.L. 91-373) expanded FUTA coverage primarily to small businesses, nonprofit organizations, and higher educational institutions. It also raised the taxable wage base from the original $3,000 to $4,200 in 1972; increased the minimum, net Federal unemployment tax rate from 0.4 to 0.5 percent in 1970, and created the Federal-State extended benefits program.

(2) The Unemployment Compensation Amendments of 1976 (P.L. 94-566), extended FUTA coverage primarily to State-local government workers and certain agricultural and domestic labor. It also raised the taxable wage base to $6,000 in 1978 and temporarily increased the minimum, net Federal unemployment tax rate from 0.5 to 0.7 percent in 1977.

(3) The Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) imposed interest charges up to 10 percent per annum under certain conditions on loans obtained by State UC programs after April 1, 1982.

(4) The Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248) increased the taxable wage base from $6,000 to $7,000 and raised the minimum, net Federal unemployment tax rate to 0.8 percent in 1983. It also raised the gross tax and credit rate in 1985 to 6.2 and 5.4 percent, respectively. This law leaves the minimum, net Federal rate unaffected but raises the maximum, potential, net tax rate in States with delinquent loans from 3.4 to 6.2 percent. The act also changed the income thresholds for taxation of unemployment compensation to $12,000 for single filers and $18,000 for married couples filing jointly.

(5) The Social Security Amendments of 1983 (P.L. 98-21) established conditions under which States could defer the payment of interest on loans from the Federal Unemployment Account and qualify for reduced FUTA credit reductions.

(6) The Tax Reform Act of 1986 (P.L. 99-514) made all unemployment compensation taxable under the Federal personal income tax.

(7) The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) extended the 0.2 percent FUTA surtax for 3 years through 1990. Also, it tripled the ceiling of the Extended Unemployment Compensation Account and quintupled the ceiling in the Federal Unemployment Account.

(8) The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) extended the 0.2 percent FUTA surtax for another 5 years through 1995.

APPENDIX

TABLE 1.—STATUS OF ADMINISTRATION ACCOUNT (ESAA), MIDSESSION REVIEW—FISCAL YEAR 1991 BUDGET

[In billions of dollars]

	Fiscal year—						
	1989	1990	1991	1992	1993	1994	1995
FUTA income		3.43	3.61	3.77	3.89	4.01	4.12
Interest earnings		.11	.12	.12	.11	.10	.10
Overflow from EUCA/FUA		.34	.77	.50	.46	.44	.46
State administration (outlays)		2.71	3.02	3.08	3.26	3.44	3.64
UI		1.80	2.02	2.13	2.27	2.42	2.59
ES, BLS, VETS		1.00	1.00	.95	.99	1.02	1.05
Federal administration		.17	.17	.17	.18	.18	.19
Balance (end of year)	1.11	1.84	1.69	1.83	1.83	1.82	1.81
Ceiling [1]	1.08	1.16	1.21	1.27	1.35	1.42	1.50
Excess	.03	.48	.48	.56	.48	.40	.31
State administration (budget authority)		2.85	2.98	3.13	3.31	3.49	3.68
State administration limitation		3.46	3.46	3.58	3.69	3.81	3.92

[1] Statutory ceiling is 40 percent of current year's appropriation.

Source: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, Division of Actuarial Services, "UI Outlook: Midsession Review," July 1990.

TABLE 2.—STATUS OF EXTENDED BENEFIT ACCOUNT (EUCA), MIDSESSION REVIEW—FISCAL YEAR 1991 BUDGET

[In billions of dollars]

	Fiscal year—						
	1989	1990	1991	1992	1993	1994	1995
FUTA income		1.19	0.63	0.42	0.43	0.45	0.46
Interest earnings		.56	.65	.66	.65	.64	.63
Overflow from ESAA		.03					
EB outlays—Federal share							
General revenue advances—EB							
Repayment of general revenue advances							
Outstanding general revenue advances							
EUCA balance (end of year)	5.82	7.58	8.51	8.81	9.39	10.01	10.65
Ceiling [1]		7.24	7.74	8.31	8.93	9.57	10.19
Excess (shortfall)		.34	.77	.50	.46	.44	.46

[1] Statutory ceiling is 0.375 percent of covered wages.

Source: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, Division of Actuarial Services, "UI Outlook: Midsession Review," July 1990.

TABLE 3.—STATUS OF LOAN ACCOUNT (FUA), MIDSESSION REVIEW—FISCAL YEAR 1991 BUDGET

[In billions of dollars]

	Fiscal year—						
	1989	1990	1991	1992	1993	1994	1995
INCOME							
FUTA income	....	0.66	0.18	....	....	....	....
State repayments	....	.18	.19	.19	.24	.14	.21
State interest payments	....	....	....	....	....	....	....
Interest earnings	....	.19	.31	.44	.53	.59	.65
General revenue advances	....	....	....	....	....	....	....
Overflow from ESAA	....	....	.82	1.25	1.06	.94	.84
OUTGO							
State loans	....	....	....	.09	.43	.41	.58
Repayment of general revenue advances	....	....	....	....	....	....	....
Outstanding general revenue advances	....	....	....	....	....	....	....
FUA balance (end of year)	1.24	2.27	3.77	5.56	6.99	8.30	9.47
Ceiling [1]	....	12.06	12.90	13.85	14.88	15.95	16.99
Excess (short fall)	....	(9.79)	(9.13)	(8.29)	(7.89)	(7.65)	(7.52)

[1] Statutory ceiling is 0.625 percent of covered wages.

Source: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, Division of Actuarial Services, "UI Outlook: Midsession Review," July 1990.

TABLE 4.—STATUS OF STATE ACCOUNTS, MIDSESSION REVIEW—FISCAL YEAR 1991 BUDGET

[In billions of dollars]

	Fiscal year—						
	1989	1990	1991	1992	1993	1994	1995
Income	....	19.15	19.27	20.47	22.23	23.71	25.04
Collections	....	16.19	16.15	17.23	18.80	20.30	21.46
Interest earnings	....	2.96	3.12	3.15	3.00	3.00	3.00
Loans	....	....	....	.09	.43	.41	.58
Excess reduced credits	....	....	....	....	....	....	....
Outgo	....	16.85	18.40	18.80	19.56	20.16	20.92
Benefits	....	16.67	18.21	18.61	19.32	20.02	20.71
Lump-sum repayments	....	.18	.19	.19	.24	.14	.21
Balance (end of year)	37.48	39.78	40.65	42.32	44.99	48.54	52.65
Outstanding loans	.78	.60	.42	.31	.51	.78	1.14
Net balance (excluding loans)	36.70	39.18	40.23	42.01	44.48	47.76	51.51

Source: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, Division of Actuarial Services, "UI Outlook: Midsession Review," July 1990.

TABLE 5.—HISTORY OF THE FEDERAL UNEMPLOYMENT TAX

Fiscal year	Taxable wage base	Statutory tax rate (percent)	FUTA revenue (millions of dollars) [1]	Effective FUTA tax rate (percent)
1936 to 1953	$3,000	0.3	2,826	....
1954	3,000	.3	280	0.20
1955	3,000	.3	277	.19
1956	3,000	.3	322	.20
1957	3,000	.3	327	.19
1958	3,000	.3	333	.19
1959	3,000	.3	322	.17
1960	3,000	.3	339	.17
1961	3,000	.4	343	.17
1962	3,000	.8	453	.21
1963	3,000	.65	939	.42
1964	3,000	.4	842	.35
1965	3,000	.4	616	.24
1966	3,000	.4	561	.20
1967	3,000	.4	597	.20
1968	3,000	.4	601	.18
1969	3,000	.4	633	.17
1970	3,000	.3	770	.20
1971	3,000	.5	964	.24
1972	3,000	.5	1,011	.22
1973	4,200	.58	1,297	.25
1974	4,200	.5	1,454	.26
1975	4,200	.5	1,342	.23
1976	4,200	.3	1,531	.24
Transition Quarter	....	....	371	....
1977	4,200	.7	1,861	.22
1978	4,200	.7	2,596	.28
1979	6,000	.7	2,902	.28
1980	6,000	.7	3,176	.28
1981	6,000	.7	3,230	.27
1982	6,000	.7	2,737	.20
1983	7,000	.8	3,583	.26
1984	7,000	.8	4,984	.36
1985	7,000	.8	4,361	.30
1986	7,000	.8	4,088	.26
1987	7,000	.8	5,077	.30
1988	7,000	.8	5,505	.30
1989	7,000	.8	4,446	.19
1990	7,000	.8	NA	NA

[1] Excluding revenue derived from reduced FUTA credits.

Source: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance, Division of Actuarial Services.

TABLE 6.—STATE TAXABLE WAGE BASES, END OF YEAR

State	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990 [1]
Alabama	$6,600	$6,600	$6,600	$6,600	$6,600	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000
Alaska	10,000	10,000	10,000	13,300	14,600	20,200	21,400	21,800	21,600	12,500	21,100	21,300	21,300
Arizona	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Arkansas	6,000	6,000	6,000	6,900	6,900	7,500	7,500	7,500	7,500	7,500	7,500	7,800	7,800
California	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Colorado	6,000	6,000	6,000	6,000	6,000	7,000	8,000	8,000	8,000	9,000	10,000	10,000	10,000
Connecticut	6,000	6,000	6,000	6,000	7,000	7,100	7,100	7,100	7,100	7,100	7,100	7,100	7,100
Delaware	6,000	6,000	6,000	6,000	6,600	7,200	8,000	8,000	8,250	8,500	8,500	8,500	8,500
District of Columbia	6,000	6,000	6,000	6,000	7,500	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Florida	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Georgia	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,500	7,500	7,500	8,500	8,500
Hawaii	9,800	10,400	11,200	12,200	13,100	13,800	14,600	15,100	15,600	16,500	18,700	19,900	19,900
Idaho	9,600	10,200	10,800	12,000	13,200	14,400	14,400	15,000	15,600	16,200	16,200	17,400	17,400
Illinois	6,000	6,000	6,500	6,500	7,000	8,000	8,000	8,500	8,500	8,500	9,000	9,000	9,000
Indiana	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Iowa	6,500	6,900	7,400	8,000	8,700	9,400	10,400	11,200	12,000	12,300	11,000	11,900	11,900
Kansas	6,000	6,000	6,000	6,000	6,000	7,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Kentucky	6,000	6,000	6,000	6,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Louisiana	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	8,500	8,500	8,500
Maine	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Maryland	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Massachusetts	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Michigan	6,000	6,000	6,000	6,000	6,000	8,000	8,500	9,000	8,500	9,500	9,500	9,500	9,500
Minnesota	7,500	8,000	8,000	8,000	8,300	9,000	9,800	10,300	10,700	11,200	11,700	12,900	12,900

TABLE 6.—STATE TAXABLE WAGE BASES, END OF YEAR—Continued

State	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990 [1]
Mississippi	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Missouri	6,000	6,000	6,000	6,000	6,600	7,000	7,000	8,000	8,000	7,500	7,000	7,000	7,500
Montana	6,000	7,400	7,600	7,800	8,000	8,200	8,400	8,600	12,200	12,400	12,600	13,200	13,200
Nebraska	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Nevada	6,900	7,400	7,900	8,400	9,300	10,200	10,700	11,100	11,400	11,700	12,100	13,300	13,300
New Hampshire	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
New Jersey	6,200	6,600	6,900	7,500	8,200	8,800	9,600	10,100	10,700	11,300	12,000	13,900	13,900
New Mexico	6,100	6,600	7,200	8,000	8,500	9,300	9,800	10,000	10,300	10,700	10,800	11,500	11,500
New York	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
North Carolina	6,000	6,000	6,000	6,000	6,000	7,000	8,200	8,700	9,200	9,600	10,100	11,100	11,100
North Dakota	6,000	7,000	7,600	8,400	9,240	10,150	10,400	10,700	10,800	10,800	11,000	11,500	11,500
Ohio	6,000	6,000	6,000	6,000	6,000	7,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Oklahoma	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	8,900	9,100	9,100	9,500	9,500
Oregon	8,000	9,000	10,000	10,000	11,000	12,000	13,000	13,000	14,000	14,000	14,000	16,000	16,000
Pennsylvania	6,000	6,000	6,000	6,300	6,600	7,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Puerto Rico	Total	Total	Total	Total	Total	Total	Total	7,000	7,000	7,000	7,000	7,000	7,000
Rhode Island	6,000	6,000	7,200	7,800	8,600	9,200	10,000	10,600	11,000	11,400	12,000	13,800	13,800
South Carolina	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
South Dakota	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Tennessee	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Texas	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	8,000	9,000	9,000
Utah	9,600	10,400	11,000	12,000	12,000	12,000	13,300	12,100	12,600	12,900	13,200	14,000	14,000
Vermont	6,000	6,000	6,000	6,000	6,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000

Virginia	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Virgin Islands	6,000	6,000	6,000	6,000	8,000	8,000	8,000	14,000	14,500	14,000	16,500	16,500	17,000
Washington	8,400	9,000	9,600	10,200	10,800	11,400	12,000	10,000	11,500	13,200	15,100	16,200	16,200
West Virginia	6,000	6,000	6,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Wisconsin	6,000	6,000	6,000	6,000	6,000	8,000	9,500	9,500	10,500	10,500	10,500	10,500	10,500
Wyoming	6,000	6,000	6,000	6,000	6,000	7,000	9,900	9,500	9,900	10,300	10,200	10,400	10,400
United States	6,000	6,000	6,000	6,000	6,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000

[1] State taxable wage bases as of September 1990.

Source: U.S. Congress, House of Representatives, Committee on Ways and Means. Federal-State Unemployment Compensation System. WMCP:100–39. Washington: U.S. Government Printing Office, September 8, 1988, 169. National Foundation for Unemployment Compensation and Workers' Compensation. "Highlights of State Unemployment Compensation Laws, January 1990." U.S. Department of Labor, Employment and Training Administration, "Comparison of State Unemployment Insurance Laws," September 1990.

TABLE 7.—UNEMPLOYMENT COMPENSATION RATIO OF TAXABLE TO TOTAL WAGES, BY STATE, FOR SELECTED YEARS 1947–89

[In percent]

State	1947	1960	1970	1975	1980	1982	1986	1989
U.S. total	0.84	0.61	0.48	0.45	0.45	0.40	0.41	0.32
Alabama	.91	.67	.51	.50	.51	.46	.46	.35
Alaska	.91	.87	.68	.61	.50	.47	.68	.49
Arizona	.89	.62	.54	.47	.46	.41	.40	.30
Arkansas	.92	.74	.58	.55	.52	.51	.48	.37
California	.83	.65	.51	.42	.42	.36	.35	.26
Colorado	.86	.62	.46	.45	.44	.38	.41	.37
Connecticut	.85	.59	.45	.52	.40	.38	.32	.24
Delaware	.80	.61	.47	.39	.38	.36	.40	.30
District of Columbia	.82	.60	.43	.41	.39	.39	.35	.22
Florida	.88	.67	.50	.50	.50	.44	.43	.32
Georgia	.88	.69	.51	.49	.47	.41	.41	.31
Hawaii	.89	.69	.68	.66	.68	.70	.69	.55
Idaho	.90	.67	.57	.50	.67	.69	.69	.54
Illinois	.81	.56	.41	.40	.41	.39	.38	.31
Indiana	.86	.59	.44	.43	.41	.38	.37	.29
Iowa	.88	.63	.46	.45	.50	.51	.58	.42
Kansas	.88	.63	.48	.48	.45	.40	.48	.43
Kentucky	.90	.65	.49	.47	.45	.49	.44	.34
Louisiana	.87	.64	.48	.46	.45	.38	.40	.34
Maine	.91	.70	.52	.54	.51	.46	.44	.32
Maryland	.87	.63	.46	.44	.43	.37	.37	.27
Massachusetts	.85	.62	.50	.44	.46	.42	.38	.29
Michigan	.83	.54	.46	.38	.37	.33	.39	.30
Minnesota	.85	.59	.59	.48	.51	.46	.47	.39
Mississippi	.92	.74	.57	.56	.53	.46	.46	.35
Missouri	.84	.60	.44	.44	.43	.40	.41	.28
Montana	.90	.67	.52	.54	.63	.62	.71	.65
Nebraska	.86	.65	.49	.46	.46	.42	.42	.31
Nevada	.87	.71	.56	.59	.59	.57	.59	.50
New Hampshire	.91	.70	.51	.52	.48	.42	.41	.29
New Jersey	.84	.57	.48	.45	.45	.44	.46	.38
New Mexico	.91	.65	.51	.52	.54	.54	.55	.42
New York	.79	.57	.41	.40	.39	.34	.32	.22
North Carolina	.91	.73	.54	.53	.50	.44	.52	.43
North Dakota	.88	.68	.59	.46	.55	.56	.57	.39
Ohio	.84	.56	.42	.41	.40	.36	.39	.30
Oklahoma	.86	.64	.49	.48	.43	.37	.46	.38

TABLE 7.—UNEMPLOYMENT COMPENSATION RATIO OF TAXABLE TO TOTAL WAGES, BY STATE, FOR SELECTED YEARS 1947–89—Continued

[In percent]

State	1947	1960	1970	1975	1980	1982	1986	1989
Oregon	.87	.73	.53	.52	.61	.59	.63	.49
Pennsylvania	.86	.60	.50	.43	.42	.40	.40	.29
Puerto Rico	0	0	.68	1.00	1.00	1.00	.59	.38
Rhode Island	.87	.74	.55	.53	.54	.55	.55	.43
South Carolina	.92	.74	.54	.54	.50	.45	.44	.33
South Dakota	.89	.67	.51	.53	.50	.45	.46	.33
Tennessee	.89	.68	.54	.46	.48	.43	.41	.32
Texas	.86	.63	.48	.47	.44	.38	.38	.34
Utah	.88	.62	.60	.48	.65	.62	.58	.45
Vermont	.91	.69	.55	.51	.50	.44	.47	.33
Virginia	.89	.67	.51	.49	.48	.41	.39	.30
Virgin Islands	NA	NA	NA	NA	.54	.34	.78	.47
Washington	.87	.60	.44	.58	.56	.55	.53	.48
West Virginia	.87	.60	.51	.43	.42	.47	.42	.32
Wisconsin	.85	.58	.51	.43	.42	.34	.50	.38
Wyoming	.89	.66	.58	.49	.44	.38	.51	.37

Note: NA denotes not applicable

Source: U.S. Congress, House of Representatives, Committee on Ways and Means. Federal-State Unemployment Compensation System. WMCP:100–39. Washington: U.S. Government Printing Office, Sept. 8, 1988, 146. U.S. Department of Labor, Unemployment Insurance Service, Division of Actuarial Services, "UI Data Summary, 2d Quarter CY 90." September 1990.

Section 9. Compliance Issues

OVERVIEW

The United States income tax system has one of the highest voluntary compliance levels in the world. In 1990, more than 202 million tax returns were filed and $1.031 trillion collected by the Internal Revenue Service (IRS). Approximately 83 percent of the tax owed on income from legitimate economic activities was voluntarily reported and paid. However, the "tax gap"—an estimate of the difference between the amount of taxes voluntarily paid in a taxable year and the amount of taxes that would have been paid if all taxpayers had filed complete and accurate returns—is approaching $100 billion a year and continues to grow.

The Subcommittee on Oversight of the Committee on Ways and Means continues to study the nature and causes of taxpayer noncompliance. The objective of this study is to develop specific recommendations for improving compliance with the tax laws. A compliance rate increase of 1 percentage point would narrow the tax gap by approximately $7 billion per year.

IRS REPORT ON COMPLIANCE

On April 19, 1990, the Subcommittee on Oversight conducted a hearing on the "tax gap" and taxpayer noncompliance estimates and projections for 1973 through 1992. Fred T. Goldberg, Jr., Commissioner of the Internal Revenue Service, testified that the "tax gap" for tax year 1987 was $83 to $94 billion. This figure consists of a $69 to $71 billion gap for individuals and $13 to $23 billion for corporations. According to Commissioner Goldberg, the tax gap consists of unpaid individual and business income taxes on legally earned income; overstated deductions, credits, and exemptions; and math errors. It exists also because some persons do not file required tax returns and because some persons do not voluntarily pay reported tax liabilities.

According to the IRS' most recently published estimates, the tax gap will exceed $113 billion, annually, by 1992. However, the actual size of the full tax gap may be more than double this official estimate, which does not include amounts owed from illegal income sources or amounts owed for any taxes other than income taxes.

In 1990, the GAO reported that the four major components of the legal tax gap are: sole proprietors, or unreported business income on a Schedule C; informal suppliers, or those operating on a cash basis; small corporations; and large corporations.

The IRS report indicates that individual taxpayers who file returns but underreport their tax liabilities account for most tax dollars lost to noncompliance. For tax year 1987, the IRS estimates the filer tax gap to be $56 billion, which is almost eight times as large as the gap resulting from individuals who fail to file tax returns.

The corporate tax gap estimates contained in the IRS report refer to filers of corporate returns. Large corporations ($10 million or more in assets), with a tax gap of $16.8 billion, dominate the total corporate tax gap of $22.8 billion. Small corporations account for $5.4 billion of the total.

With regard to noncompliance by large corporations, the IRS 1988 Annual Report notes that through the Coordinated Examination Program (CEP), teams of experienced examiners and specialists conducted examinations of 1,461 of the largest and most complex domestic and foreign-controlled corporations. In 1988, the examinations resulted in recommended tax deficiencies and penalties totaling $9.58 billion. In 1988, all deficiencies proposed by the Examination Division totalled $19.2 billion. In other words, approximately 50 percent of all deficiencies proposed by the Examination Division in 1988 pertained to the 1,461 corporations included in CEP.

The total tax gap (in current dollars) shows a dramatic increase from $28 billion for 1973, to $62 billion for 1979, to $94 billion for 1987. The tax gap is projected to increase for 1992 to nearly $114 billion. The IRS states that the increase is due to "expansion in the economy and through inflation." The IRS points out, however, that its new estimates are lower than prior estimates (1979 and 1983 IRS studies) because of recent tax legislation, the availability of new compliance tools, and improvements in methodology.

The 1990 tax gap report is the second in a series of reports dealing with taxpayer noncompliance. The IRS' initial report was issued in March 1988. The IRS expects to issue similar reports discussing noncompliance in the areas of employment tax, excise tax, and illegal source income.

The results of the IRS study are summarized in the following table:

TABLE 1.—COMPONENTS OF LEGAL SECTOR INCOME TAX GAP (1987)

	Compliance rate (percent)	Tax gap (billions of dollars)	Tax gap (percent)
Small corporations	75.5	5.4	5.7
Large corporations	82.3	16.8	17.8
Unreported income by informal suppliers and sole proprietors	41.4	24.3	25.8
Overstated deductions, adjustments and exemptions [1]	NA	6.1	6.4
Nonfilers [1]	NA	7.2	7.6
Remittance gap [1]	NA	7.9	8.4
Wages, interest and dividends	99.0	4.3	4.6
Capital gains	88.3	6.7	7.1
Other business income [2]	NA	6.4	6.7
Other	NA	9.1	9.7
Total	NA	94.2	100.0

[1] Some of these amounts are attributable to taxpayers who are sole proprietors or informal suppliers.
[2] Partnership income, S-corporation income, net rental income, and net royalty income.

NA = Not available.

Source: IRS, April 1990.

1990 GAO Report

In response to the IRS tax gap estimate, the Subcommittee requested that the GAO compile for the Subcommittee the best detailed information available on four major components which accounted for $45 billion, or half, of the 1987 tax gap estimates: sole proprietors, informal suppliers, small corporations and large corporations. For each component, GAO compiled information on the types of taxpayers who were noncompliant, issues of noncompliance, IRS's enforcement programs to pursue noncompliance, and ways in which IRS could improve its compliance. The results of the GAO study were released at the Subcommittee hearing of April 19, 1990.

TABLE 2.—DISTRIBUTION OF THE GROSS INCOME TAX GAP BY SOURCE, TAX YEAR 1987

[Dollars in millions]

Source of gap	Tax gap	Percentage distributions of the tax gap
Total income tax	$84,874	100.0
Individual income tax	63,475	74.8
Filers of tax returns	56,301	66.3
Underreported income	(48,292)	(56.9)
Wages and salaries	(1,417)	(1.7)
Interest and dividends	(3,227)	(3.8)
Capital gains	(6,650)	(7.8)
Informal suppliers [1]	(7,739)	(9.1)
Other nonfarm proprietor income	(16,646)	(19.6)
Farm income	(1,904)	(2.2)
Partnership and small business corporation income	(3,216)	(3.8)
Pensions and annuities	(123)	(.1)
Rents and royalties	(3,141)	(3.7)
Estate and trust income	(64)	(.1)
State income tax refunds	(86)	(.1)
Alimony income	(173)	(.2)
Taxable unemployment and Social Security benefits	(338)	(.4)
Other income	(3,566)	(4.2)
Overstated subtractions	(6,062)	(7.1)
Adjustments	(545)	(.6)
Deductions	(3,478)	(4.1)
Exemptions	(2,039)	(2.4)
Credits	(899)	(1.1)
Math errors	(1,049)	(1.2)
Nonfilers of tax returns	7,174	8.4
Corporation income tax	21,399	25.2
Small corporations (assets under $10 million)	5,225	6.2
Unreported income	(2,519)	(3.0)
Overstated deductions	(2,706)	(3.2)
Large corporations (assets of $10 million or more)	15,845	18.7
Other [2]	329	.4

[1] Informal suppliers are proprietors who operate with informal business styles.

[2] Consists of $164 million gap for fiduciaries and $165 million gap for unrelated business income of tax-exempt organizations.

Note: Details do not add due to rounding.

Source: General Accounting Office, April 1990.

According to GAO, the components of the 1987 tax gap estimates differ in the types of noncompliance and the taxpayers who were noncompliant. For example, sole proprietors have extensive amounts of unreported income, while large corporations, for the most part, report their income but improperly allocate it among their foreign and domestic operations. Across the board, factors responsible for noncompliance have not been conclusively identified, but include the absence of third-party reporting and withholding on business transactions of small businesses and the complexity or vagueness on our tax laws.

GAO ANALYSIS OF THE MAJOR TAX GAP COMPONENTS

Sole Proprietors—Unreported Income of $16.6 Billion

Sole proprietors underpaid 23 percent of their tax liability, reflecting both unreported income as well as overstated business deductions. They included those who provided services, such as doctors, lawyers, or accountants; who produced goods, such as manufacturers; and who sold goods at fixed locations, such as car dealers and grocers. While sole proprietors with the least income had lower amounts of unreported income than other sole proprietors, their percentage of unreported income was greater. This was particularly apparent for sole proprietors in fixed-location sales and in transportation.

Informal Suppliers—Unreported Income of $7.7 Billion

Because informal suppliers often operate on a cash basis, their income is not documented in formal books and records. Their income also is unlikely to be subjected to third party reporting. The types of informal suppliers who account for the largest parts of this tax gap are those who make home repairs, provide child care, or sell food at roadside stands.

Small Corporations—Unreported Income and Overstated Deductions of $5.2 Billion

Small corporations are those with under $10 million in assets. Their noncompliance was about equally divided between unreported income and overstated deductions, such as for depreciation and repairs. The smaller a corporation's asset size, the greater its percentage of noncompliance, especially for those in services or retail sales.

Large Corporations—Improperly Accounted for Income or Expenses of $15.8 Billion

The noncompliance of large corporations, those with $10 million or more in assets, generally involves the improper accounting of reported income and deductions rather than unreported income. For example, a large corporation may misallocate income between its foreign and domestic subsidiaries or misstate the period over which assets should be depreciated or expensed. The large corporations with the highest noncompliance, as identified in IRS' examinations, were those in the petroleum and banking industries.

Research on Reasons for Noncompliance—Not Conclusive

Research by IRS and others has not been conclusive on the reasons that these taxpayers were noncompliant. Further, the reasons vary somewhat by component. For sole proprietors and small corporations, the tax gap was attributed to the complexity of tax laws and intentional noncompliance to survive in competitive business environments. The lack of wage withholding for sole proprietors and information reporting for payments made to corporations also may contribute to the tax gap. Large corporations also may not comply because of vagueness in tax laws, such as exactly which expenses are deductible in calculating the research credit. Informal suppliers may not report income because their transactions often occur in cash, are not documented, and are not subjected to third-party controls, such as wage withholding or information reporting.

IRS Uses Enforcement Programs To Improve Compliance

The most common IRS enforcement program, known as the general examination program involves examinations of income tax returns from all types of taxpayers. Because of resource constraints, IRS has been doing fewer examinations under its general examination program, which has lowered the examination rate to about 1 percent of all tax returns filed by individuals. IRS also has special examination programs at both national and district office levels to look at returns from specific types of taxpayers who have exhibited high degrees of noncompliance. For example, IRS has a special examination program to concentrate on probing for unreported income in examinations of sole proprietors. In addition, IRS has a computer program to match individuals' tax returns against information returns to identify those who do not report all of their income or do not file their tax returns. IRS is testing the feasibility of using information returns to identify unreported income by sole proprietors, partnerships, and corporations.

Proposals For How IRS Could Better Pursue Noncompliance

The GAO, IRS, and others have suggested ways to improve tax compliance. For example, GAO recommended using information returns to identify other types of noncompliance, like misclassifying employees as independent contractors, which may result in taxes not being withheld from these workers' income and not being reported by them. Others, such as participants at an American Bar Association tax compliance seminar, have proposed information reporting on payments by households, and withholding on certain payments, such as interest and dividends. In the area of pension and annuity income, it has been suggested that additional information reporting requirements be imposed so that beneficiaries and the IRS would be more fully informed as to what portions of certain benefits are taxable. Another idea, raised by an IRS Assistant Commissioner, favored getting assistance from State and local authorities to verify that Federal tax returns have been filed by sidewalk vendors or other informal suppliers who are seeking licenses for businesses.

LEGISLATIVE RESPONSES

The problem of taxpayer noncompliance has resulted in a series of remedial legislative measures. Among these are the compliance provisions of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, the Interest and Dividend Tax Compliance Act of 1983, the Deficit Reduction Act of 1984, and the Tax Reform Act of 1986. These provisions taken together have enhanced IRS capabilities to detect and correct noncompliance with income tax laws.

As a continuation of tax reform, the Subcommittee on Oversight completed a comprehensive review of the structure, fairness, and effectiveness of the civil tax penalty provisions contained in the Internal Revenue Code.

The Subcommittee on Oversight held 4 days of hearings and a number of informal "roundtable" discussions to explore every aspect of the existing penalty structure to develop a set of legislative and administration improvements. The penalty reform package was originally set forth in H.R. 2528, the "Improved Penalty Administration and Compliance Tax Act" and was enacted into law as part of the Budget Reconciliation Act of 1989.

The Subcommittee on Oversight will continue to investigate revenue loss attributable to taxpayer noncompliance. As part of its review, the subcommittee will examine, in detail, various components of the tax gap with the objective of developing specific recommendations to enhance taxpayer compliance and fairness in tax collection. The subcommittee plans to examine noncompliance attributable to large corporations, sole proprietors, and informal suppliers (e.g., cash business operations, street vendors, etc.). These categories account for the largest share, in terms of dollars, of noncompliance as estimated by the IRS. In addition, the subcommittee will also examine the issue of money laundering.

IRS COMPLIANCE OPERATIONS

The IRS uses its resources to promote voluntary compliance through enforcement and taxpayer service activities. The Examination function administers a nationwide audit program involving the selection and examination of all types of Federal tax returns to determine correct liabilities of taxpayers. Examinations are conducted either through interviews or correspondence. In fiscal year 1990, the IRS examined 1.09 million returns through field or office audits which resulted in $22.4 billion recommended additional tax and penalties.

TABLE 3.—KEY WORKLOAD INDICATORS: FISCAL YEARS 1981 TO 1991

Fiscal year	Returns filed (in thousands)	Audit coverage rates
1981	94,018	1.84
1982	95,482	1.63
1983	95,284	1.56
1984	96,288	1.31
1985	99,426	1.34
1986	102,393	1.12
1987	103,460	1.10
1988	106,994	1.03
1989	110,253	.93
1990 (estimate)	111,487	.85
1991 (estimate)	111,997	1.03

Source: IRS, September 1990.

The IRS has several other programs in place to enforce the tax laws. One example is the Taxpayer Compliance Measurement Program (TCMP), which was developed in 1962 and is based on the examination of a stratified random sample of returns. The IRS compares what taxpayers report on returns with what examiners determined should have been reported. This is the only examination program which uses random selection. The resulting data is used to develop discriminant function (DIF) formulas, which are the primary methods of selecting returns for examination. The IRS conducts research on returns containing specific issues to determine pockets of noncompliance as well as the reasons for noncompliance. The TCMP is the IRS's primary method for estimating the "tax gap."

The IRS document matching program, also referred to as the Information Returns Program (IRP), is a largely computerized compliance program used by the IRS to match third-party information on items such as wages, interest, dividends, and certain deductions with the amounts reported by taxpayers on their income tax returns. The IRS uses the information to identify people who are reported to have received income, but underreported the income or did not file returns.

During 1990, the IRS received over 1 billion information returns. When return information does not agree with filed information documents, the IRS asks taxpayers to explain the discrepancy.

To enhance voluntary compliance, the IRS maintains various programs to assist and educate the public on their tax obligations. Many programs are available to taxpayers including telephone assistance, televised tax programs, audio and video cassette programs, walk-in assistance, workshops, and seminars. Several IRS-sponsored volunteer programs offer free help in filling out tax returns.

The IRS provides help to taxpayers through a toll-free telephone system with trained staff to help with technical tax law and procedural questions and account problems. At a recent Subcommittee on Oversight hearing, the IRS reported that 77.2 percent of the answers provided to taxpayers were correct. Witnesses testifying before the subcommittee indicated that improvements in the accuracy rate of IRS responses derived in part from the high rate of employee retention and improved training. In addition, the IRS is in the process of testing artificial intelligence for a computer system called the "Taxpayer Service Assistance Expert System" which could increase the accuracy of IRS responses.

The IRS also uses trained volunteers at community sites across the country to help people fill out their tax returns. In 1989, more than 77,000 trained individuals volunteered their time to offer tax counseling and to help fill out tax returns for more than 2.6 million people. The Volunteer Income Tax Assistance (VITA) Program assisted over 1 million taxpayers, and the Tax Counseling for the Elderly (TCE) Program helped over 1.3 million individuals. These two programs reach special groups of taxpayers for whom professional help may be out of reach, including the low-income, non-English speaking, handicapped, and elderly.

The Community Outreach Tax Assistance Program also provides tax assistance and information to more than a million taxpayers.

This program is offered at convenient times and locations in the community for taxpayers who are unable to seek help at IRS offices during regular business hours. The IRS representatives explain changes in the tax law and the effect on taxpayers, and discuss particular provisions of the tax law with special-interest groups such as small business owners, self-employed people, farmers, and retirees.

To enhance voluntary compliance, the IRS continues to seek ways to improve and simplify tax forms and instructions.

TABLE 4.—TAXPAYER SERVICE

Fiscal year	Taxpayers assisted (millions)	Tele-tax contacts (millions)	Level of service (percent)
1981	44.8	NA	70.0
1982	47.8	NA	71.0
1983	49.1	1.8	8.6
1984	53.6	3.4	79.5
1985	58.9	8.3	72.2
1986	54.8	7.9	81.0
1987	53.2	10.9	77.0
1988	59.8	13.4	84.5
1989	78.4	27.8	79.6
1990	[1] 71.4	[1] 30.0	[2] 71.6
1991 [3]			

[1] Projected.
[2] Through April 28, 1990.
[3] Figures not yet available.
NA = Not available.

IRS FUNDING

Despite growing noncompliance, the IRS continued to experience budgetary problems in fiscal years 1989 and 1990. As a result, the IRS canceled or delayed critical compliance initiatives. Thus far in fiscal year 1991, the IRS has not reported reduction in critical programs due to budgetary shortfalls.

The Subcommittee on Oversight continuously reviews IRS' overall operations and the administration of the Federal Tax Code. As part of the Subcommittee's oversight, a hearing is conducted each year to specifically review the impact of the Administration's budget proposals relating to IRS funding and staffing levels. Upon completion of the hearing, the Subcommittee forwards its findings and funding recommendations to the Chairman of the House Committee on Appropriations, Subcommittee on Treasury, Postal Service, and General Government. In recent years, the Subcommittee has focused on funding and staffing related to IRS programs that: assist taxpayers; examine corporate and individual tax returns; enforce tax laws applicable to exempt organizations and employee plans; and, overhaul and modernize the Service's data processing and management information systems.

TABLE 5.—INTERNAL REVENUE SERVICE BUDGET CHRONOLOGY, FISCAL YEARS 1981–91

[Dollars in millions]

Fiscal year	Final congressional allowance	Actual level realized
1981:		
Full time equivalent	86,156	84,695
Amount	$2,479.7	$2,465.5
1982:		
Full time equivalent	82,857	81,452
Amount	$2,671.9	$2,626.3
1983:		
Full time equivalent	83,603	83,603
Amount	$3,043.0	$2,968.5
1984:		
Full time equivalent	87,635	87,635
Amount	$3,325.6	$3,279.1
1985:		
Full time equivalent	92,259	92,259
Amount	$3,574.6	$3,601.0
1986:		
Full time equivalent	95,880	95,880
Amount	$3,826.1	$3,842.0
1987:		
Full time equivalent	101,198	102,189
Amount	$4,444.7	$4,335.1
1988:		
Full time equivalent	112,161	114,875
Amount	$5,058.9	$5,025.0
1989:		
Full time equivalent	113,058	114,758
Amount	$5,194.9	$5,194.7
1990:		
Full time equivalent	115,110	(1)
Amount	$5,549.9	(1)

[1] Pending.

PART IV. HISTORICAL TABLES

Part IV is comprised of historical tables showing the major features of the U.S. tax system. Table 1 provides a detailed breakdown of receipts by source since 1980. Tables 2 through 4 provide a summarized breakdown of receipts, by source, since 1934; showing major categories of receipts in dollars, as a percentage of total receipts, and as a percentage of GNP. Tables 5 and 6 show receipts, outlays and the deficit (the difference between receipts and outlays) in dollar terms, and a percentage of GNP since 1934. Table 7 shows receipts, outlays and the deficit in constant 1982 dollars since 1934.

TABLE 1.—RECEIPTS BY SOURCE, 1981–91

[In millions of dollars]

Source	Actual										Estimate 1991
	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	
Individual income taxes	285,917	297,744	288,938	298,415	334,531	348,959	392,557	401,181	445,690	466,884	492,635
Corporation income taxes	61,137	49,207	37,022	56,893	61,331	63,143	83,926	94,508	103,583	93,507	95,866
Social insurance taxes and contributions (trust funds):											
Employment taxes and contributions:											
Old-age and survivors insurance (off-budget)	117,757	122,840	128,972	150,312	169,822	182,518	194,541	220,337	240,595	255,031	269,477
Disability insurance (off-budget)	12,418	20,626	18,348	15,763	16,348	17,711	18,861	21,154	23,071	26,625	28,810
Hospital insurance	30,340	34,301	35,641	40,262	44,871	51,335	55,992	59,859	65,364	68,556	74,037
Railroad retirement	2,457	2,917	2,805	3,321	3,605	3,498	3,634	3,743	3,836	3,679	3,850
Total employment taxes and contributions	162,973	180,686	185,766	209,658	234,646	255,062	273,028	305,093	332,859	353,891	376,175
Unemployment insurance	15,763	16,600	18,799	25,138	25,758	24,098	25,575	24,584	22,011	21,635	21,194
Other retirement contributions:											
Federal employees' retirement, employee contributions	3,908	4,140	4,351	4,494	4,672	4,645	4,613	4,537	4,428	4,405	4,469
Contributions for non-Federal employees	76	72	78	86	87	96	102	122	119	117	117
Total other retirement contributions	3,984	4,212	4,429	4,580	4,759	4,742	4,715	4,658	4,546	4,522	4,586
Total social insurance taxes and contributions	182,720	201,498	208,994	239,376	265,163	283,901	303,318	334,335	359,416	380,047	401,955

Excise taxes:											
Federal funds:											
Alcohol	5,606	5,382	5,557	5,315	5,562	5,828	5,971	5,709	5,661	5,695	7,437
Tobacco	2,581	2,537	4,136	4,660	4,779	4,589	4,763	4,616	4,378	4,081	4,623
Windfall profit tax	23,252	18,407	12,135	8,906	6,348	2,251					
Ozone depletion										360	1,250
Other	2,689	2,344	2,258	3,398	2,408	3,385	4,110	5,860	2,759	5,455	7,608
Total Federal fund excise taxes	34,128	28,670	24,086	22,279	19,097	16,185	14,844	16,185	12,798	15,591	20,918
Trust funds:											
Highway	6,305	6,744	8,297	11,743	13,015	13,363	13,032	14,114	15,628	13,867	16,817
Airport and airway	21	133	2,165	2,499	2,851	2,736	3,060	3,189	3,664	3,700	4,964
Other	385	765	753	840	1,028	767	1,521	1,739	1,993	2,187	2,111
Total trust fund excise taxes	6,711	7,641	11,214	15,082	16,894	16,866	17,613	19,042	21,286	19,754	23,892
Total excise taxes	40,839	36,311	35,300	37,361	35,992	32,919	32,457	35,227	34,084	35,345	44,810
Estate and gift taxes	6,787	7,991	6,053	6,010	6,422	6,958	7,493	7,594	8,745	11,500	12,241
Customs duties and fees	8,083	8,854	8,655	11,370	12,079	13,327	15,085	16,198	16,334	16,707	17,698
Miscellaneous receipts:											
Deposits of earnings by Federal Reserve System	12,834	15,186	14,492	15,684	17,059	18,374	16,817	17,163	19,604	24,319	23,384
Other miscellaneous receipts	956	975	1,108	1,347	1,480	1,510	2,490	2,747	3,225	2,997	2,852
Total miscellaneous receipts	13,790	16,161	15,601	17,031	18,539	19,884	19,307	19,910	22,828	27,316	26,236
Total receipts	599,272	617,766	600,562	666,457	734,057	769,091	854,143	908,954	990,691	1,031,308	1,091,440
(On-budget)	(469,097)	(474,299)	(453,242)	(500,382)	(547,886)	(568,862)	(640,741)	(667,463)	(727,026)	(749,652)	(793,153)
(Off-budget)	(130,176)	(143,467)	(147,320)	(166,075)	(186,171)	(200,228)	(213,402)	(241,491)	(263,666)	(281,656)	(298,287)

Source: Office of Management and Budget, Budget of the United States Government, Fiscal year 1992.

TABLE 2.—SUMMARY OF RECEIPTS BY SOURCE: 1934–1996

[In millions of dollars]

Fiscal year	Individual income taxes	Corporation income taxes [1]	Social insurance taxes and contributions			Excise taxes	Other	Total receipts		
			Total	(On-Budget)	(Off-Budget)			Total	(On-Budget)	(Off-Budget)
1934	420	364	30	(30)	....	1,354	788	2,995	(2,995)	....
1935	527	529	31	(31)	....	1,439	1,084	3,609	(3,609)	....
1936	674	719	52	(52)	....	1,631	847	3,923	(3,923)	....
1937	1,092	1,038	580	(315)	(265)	1,876	801	5,387	(5,122)	(265)
1938	1,287	1,287	1,541	(1,154)	(387)	1,863	773	6,751	(6,364)	(387)
1939	1,029	1,127	1,593	(1,090)	(503)	1,871	675	6,295	(5,792)	(503)
1940	892	1,197	1,785	(1,235)	(550)	1,977	698	6,548	(5,998)	(550)
1941	1,314	2,124	1,940	(1,252)	(688)	2,552	781	8,712	(8,024)	(688)
1942	3,263	4,719	2,452	(1,557)	(896)	3,399	801	14,634	(13,738)	(896)
1943	6,505	9,557	3,044	(1,913)	(1,130)	4,096	800	24,001	(22,871)	(1,130)
1944	19,705	14,838	3,473	(2,181)	(1,292)	4,759	972	43,747	(42,455)	(1,292)
1945	18,372	15,988	3,451	(2,141)	(1,310)	6,265	1,083	45,159	(43,849)	(1,310)
1946	16,098	11,883	3,115	(1,877)	(1,238)	6,998	1,202	39,296	(38,057)	(1,238)
1947	17,935	8,615	3,422	(1,963)	(1,459)	7,211	1,331	38,514	(37,055)	(1,459)
1948	19,315	9,678	3,751	(2,134)	(1,616)	7,356	1,461	41,560	(39,944)	(1,616)
1949	15,552	11,192	3,781	(2,091)	(1,690)	7,502	1,388	39,415	(37,724)	(1,690)
1950	15,755	10,449	4,338	(2,232)	(2,106)	7,550	1,351	39,443	(37,336)	(2,106)
1951	21,616	14,101	5,674	(2,554)	(3,120)	8,648	1,578	51,616	(48,496)	(3,120)
1952	27,934	21,226	6,445	(2,851)	(3,594)	8,852	1,710	66,167	(62,573)	(3,594)
1953	29,816	21,238	6,820	(2,723)	(4,097)	9,877	1,857	69,608	(65,511)	(4,097)

1954	29,542	21,101	7,208	(2,619)	(4,589)	9,945	1,905	69,701	(65,112)	(4,589)
1955	28,747	17,861	7,862	(2,781)	(5,081)	9,131	1,850	65,451	(60,370)	(5,081)
1956	32,188	20,880	9,320	(2,896)	(6,425)	9,929	2,270	74,587	(68,162)	(6,425)
1957	35,620	21,167	9,997	(3,208)	(6,789)	10,534	2,672	79,990	(73,201)	(6,789)
1958	34,724	20,074	11,239	(3,190)	(8,049)	10,638	2,961	79,636	(71,587)	(8,049)
1959	36,719	17,309	11,722	(3,427)	(8,296)	10,578	2,921	79,249	(70,953)	(8,296)
1960	40,715	21,494	14,683	(4,042)	(10,641)	11,676	3,923	92,492	(81,851)	(10,641)
1961	41,338	20,954	16,439	(4,331)	(12,109)	11,860	3,796	94,388	(82,279)	(12,109)
1962	45,571	20,523	17,046	(4,776)	(12,271)	12,534	4,001	99,676	(87,405)	(12,271)
1963	47,588	21,579	19,804	(5,629)	(14,175)	13,194	4,395	106,560	(92,385)	(14,175)
1964	48,697	23,493	21,963	(5,597)	(16,366)	13,731	4,731	112,613	(96,248)	(16,366)
1965	48,792	25,461	22,242	(5,519)	(16,723)	14,570	5,753	116,817	(100,094)	(16,723)
1966	55,446	30,073	25,546	(6,460)	(19,085)	13,062	6,708	130,835	(111,749)	(19,085)
1967	61,526	33,971	32,619	(8,217)	(24,401)	13,719	6,987	148,822	(124,420)	(24,401)
1968	68,726	28,665	33,923	(9,007)	(24,917)	14,079	7,580	152,973	(128,056)	(24,917)
1969	87,249	36,678	39,015	(10,062)	(28,953)	15,222	8,718	186,882	(157,928)	(29,953)
1970	90,412	32,829	44,362	(10,903)	(33,459)	15,705	9,499	192,807	(159,348)	(33,459)
1971	86,230	26,785	47,325	(11,481)	(35,845)	16,614	10,185	187,139	(151,294)	(35,845)
1972	94,737	32,166	52,574	(12,667)	(39,907)	15,477	12,355	207,309	(167,402)	(39,907)
1973	103,246	36,153	63,115	(17,031)	(46,084)	16,260	12,026	230,799	(184,715)	(46,084)
1974	118,952	38,620	75,071	(21,146)	(53,925)	16,844	123,737	263,224	(209,299)	(53,925)
1975	122,386	40,621	85,534	(22,077)	(62,458)	16,551	14,998	279,090	(216,633)	(62,458)
1976	131,603	41,409	90,769	(24,381)	(66,389)	16,963	17,317	298,060	(231,671)	(66,389)
TQ	38,801	8,460	25,219	(7,203)	(18,016)	4,473	4,279	81,232	(63,216)	(18,016)
1977	157,626	54,892	106,485	(29,668)	(76,817)	17,548	19,008	355,559	(278,741)	(76,817)
1978	180,988	59,952	120,967	(35,576)	(85,391)	18,376	19,278	399,561	(314,169)	(85,391)
1979	217,841	65,677	138,939	(40,945)	(97,994)	18,745	22,101	463,302	(365,309)	(97,994)

TABLE 2.—SUMMARY OF RECEIPTS BY SOURCE: 1934–1996—Continued

[In millions of dollars]

Fiscal year	Individual income taxes	Corporation income taxes [1]	Social insurance taxes and contributions			Excise taxes	Other	Total receipts		
			Total	(On-Budget)	(Off-Budget)			Total	(On-Budget)	(Off-Budget)
1980	244,069	64,600	157,803	(44,594)	(113,209)	24,329	26,311	517,112	(403,903)	(113,209)
1981	285,917	61,137	182,720	(52,545)	(130,176)	40,839	28,659	599,272	(469,097)	(130,176)
1982	297,744	49,207	201,498	(58,031)	(143,467)	36,311	33,006	617,766	(474,299)	(143,467)
1983	288,938	37,022	208,994	(61,674)	(147,320)	35,300	30,309	600,562	(453,242)	(147,320)
1984	298,415	56,893	239,376	(73,301)	(166,075)	37,361	34,412	666,457	(500,382)	(166,075)
1985	334,531	61,331	265,163	(78,992)	(186,171)	35,992	37,040	734,057	(547,886)	(186,171)
1986	348,959	63,143	283,901	(83,673)	(200,228)	32,919	40,168	769,091	(568,862)	(200,228)
1987	392,557	83,926	303,318	(89,916)	(213,402)	32,457	41,884	854,143	(640,741)	(213,402)
1988	401,181	94,508	334,335	(92,845)	(241,491)	35,227	43,702	908,954	(667,463)	(241,491)
1989	445,690	103,583	359,416	(95,751)	(263,666)	34,084	47,918	990,691	(727,026)	(263,666)
1990	466,884	93,507	380,047	(98,392)	(281,656)	35,345	55,524	1,031,308	(749,652)	(281,656)
1991 estimate	492,635	95,866	401,955	(103,668)	(298,287)	44,810	56,175	1,091,440	(793,153)	(298,287)
1992 estimate	529,518	101,913	429,363	(114,109)	(315,254)	47,768	56,467	1,165,029	(849,775)	(315,254)
1993 estimate	572,044	109,041	463,792	(125,092)	(338,700)	50,143	57,649	1,252,669	(913,969)	(338,700)
1994 estimate	632,902	120,578	500,954	(135,455)	(365,499)	51,970	58,878	1,365,282	(999,783)	(365,499)
1995 estimate	688,899	130,024	534,076	(144,229)	(389,847)	53,585	60,762	1,467,346	(1,077,499)	(389,847)
1996 estimate	742,098	138,285	568,511	(151,298)	(417,213)	47,789	64,065	1,560,748	(1,143,535)	(417,213)

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[1] Beginning in 1987, includes trust fund receipts for the hazardous substance superfund. The trust fund amounts are as follows (in millions of dollars): 1987: 196; 1988: 313; 1989: 292; 1990: 461; 1991: 320; 1992: 394; 1993: 465; 1994: 548; 1995: 662; 1996: 750.

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 1992.

TABLE 3.—PERCENTAGE COMPOSITION OF RECEIPTS BY SOURCE: 1934–1996

Fiscal year	Individual income taxes	Corporation income taxes	Social insurance taxes and contributions			Excise taxes	Other	Total receipts		
			Total	(On-Budget)	(Off-Budget)			Total	(On-Budget)	(Off-Budget)
1934	14.2	12.3	1.0	(1.0)	....	45.8	26.7	100.0	(100.0)	....
1935	14.6	14.7	.9	(.9)	....	39.9	30.0	100.0	(100.0)	....
1936	17.2	18.3	1.3	(1.3)	....	41.6	21.6	100.0	(100.0)	....
1937	20.3	19.3	10.8	(5.9)	(4.9)	34.8	14.9	100.0	(95.1)	(4.9)
1938	19.1	19.1	22.8	(17.1)	(5.7)	27.6	11.5	100.0	(94.3)	(5.7)
1939	16.3	17.0	25.3	(17.3)	(8.0)	29.7	10.7	100.0	(92.0)	(8.0)
1940	13.6	18.3	27.3	(18.9)	(8.4)	30.2	10.7	100.0	(91.6)	(8.4)
1941	15.1	24.4	22.3	(14.4)	(7.9)	29.3	9.0	100.0	(92.1)	(7.9)
1942	22.3	32.2	16.8	(10.6)	(6.1)	23.2	5.5	100.0	(93.9)	(6.1)
1943	27.1	39.8	12.7	(8.0)	(4.7)	17.1	3.3	100.0	(95.3)	(4.7)
1944	45.0	33.9	7.9	(5.0)	(3.0)	10.9	2.2	100.0	(97.0)	(3.0)
1945	40.7	35.4	7.6	(4.7)	(2.9)	13.9	2.4	100.0	(97.1)	(2.9)
1946	41.0	30.2	7.9	(4.8)	(3.2)	17.8	3.1	100.0	(96.8)	(3.2)
1947	46.6	22.4	8.9	(5.1)	(3.8)	18.7	3.5	100.0	(96.2)	(3.8)
1948	46.5	23.3	9.0	(5.1)	(3.9)	17.7	3.5	100.0	(96.1)	(3.9)
1949	39.5	28.4	9.6	(5.3)	(4.3)	19.0	3.5	100.0	(95.7)	(4.3)
1950	39.9	26.5	11.0	(5.7)	(5.3)	19.1	3.4	100.0	(94.7)	(5.3)
1951	41.9	27.3	11.0	(4.9)	(6.0)	16.8	3.1	100.0	(94.0)	(6.0)
1952	42.2	32.1	9.7	(4.3)	(5.4)	13.4	2.6	100.0	(94.6)	(5.4)
1953	42.8	30.5	9.8	(3.9)	(5.9)	14.2	2.7	100.0	(94.1)	(5.9)
1954	42.4	30.3	10.3	(3.8)	(6.6)	14.3	2.7	100.0	(93.4)	(6.6)

TABLE 3.—PERCENTAGE COMPOSITION OF RECEIPTS BY SOURCE: 1934–1996—Continued

Fiscal year	Individual income taxes	Corporation income taxes	Social insurance taxes and contributions			Excise taxes	Other	Total receipts		
			Total	(On-Budget)	(Off-Budget)			Total	(On-Budget)	(Off-Budget)
1955	43.9	27.3	12.0	(4.2)	(7.8)	14.0	2.8	100.0	(92.2)	(7.8)
1956	43.2	28.0	12.5	(3.9)	(8.6)	13.3	3.0	100.0	(91.4)	(8.6)
1957	44.5	26.5	12.5	(4.0)	(8.5)	13.2	3.3	100.0	(91.5)	(8.5)
1958	43.6	25.2	14.1	(4.0)	(10.1)	13.4	3.7	100.0	(89.9)	(10.1)
1959	46.3	21.8	14.8	(4.3)	(10.5)	13.3	3.7	100.0	(89.5)	(10.5)
1960	44.0	23.2	15.9	(4.4)	(11.5)	12.6	4.2	100.0	(88.5)	(11.5)
1961	43.8	22.2	17.4	(4.6)	(12.8)	12.6	4.0	100.0	(87.2)	(12.8)
1962	45.7	20.6	17.1	(4.8)	(12.3)	12.6	4.0	100.0	(87.7)	(12.3)
1963	44.7	20.3	18.6	(5.3)	(13.3)	12.4	4.1	100.0	(86.7)	(13.3)
1964	43.2	20.9	19.5	(5.0)	(14.5)	12.2	4.2	100.0	(85.5)	(14.5)
1965	41.8	21.8	19.0	(4.7)	(14.3)	12.5	4.9	100.0	(85.7)	(14.3)
1966	42.4	23.0	19.5	(4.9)	(14.9)	10.0	5.1	100.0	(85.4)	(14.6)
1967	41.3	22.8	21.9	(5.5)	(16.4)	9.2	4.7	100.0	(83.6)	(16.4)
1968	44.9	18.7	22.2	(5.9)	(16.3)	9.2	5.0	100.0	(83.7)	(16.3)
1969	46.7	19.6	20.9	(5.4)	(15.5)	8.1	4.7	100.0	(84.5)	(15.5)
1970	46.9	17.0	23.0	(5.7)	(17.4)	8.1	4.9	100.0	(82.6)	(17.4)
1971	46.1	14.3	25.3	(6.1)	(19.2)	8.9	5.4	100.0	(80.8)	(19.2)
1972	45.7	15.5	25.4	(6.1)	(19.2)	7.5	6.0	100.0	(80.7)	(19.2)
1973	44.7	15.7	27.3	(7.4)	(20.0)	7.0	5.2	100.0	(80.0)	(20.0)
1974	45.2	14.7	28.5	(8.0)	(20.5)	6.4	5.2	100.0	(79.5)	(20.5)
1975	43.9	14.6	30.3	(7.9)	(22.4)	5.9	5.4	100.0	(77.6)	(22.4)
1976	44.2	13.9	30.5	(8.2)	(22.3)	5.7	5.8	100.0	(77.7)	(22.3)

TQ	47.8	10.4	31.0	(8.9)	(22.2)	5.5	5.3	100.0	(77.8)	(22.2)
1977	44.3	15.4	29.9	(8.3)	(21.6)	4.9	5.3	100.0	(78.4)	(21.6)
1978	45.3	15.0	30.3	(8.9)	(21.4)	4.6	4.8	100.0	(78.6)	(21.4)
1979	47.0	14.2	30.0	(8.8)	(21.2)	4.0	4.8	100.0	(78.8)	(21.2)
1980	47.2	12.5	30.5	(8.6)	(21.9)	4.7	5.1	100.0	(78.1)	(21.9)
1981	47.7	10.2	30.5	(8.8)	(21.7)	6.8	4.8	100.0	(78.3)	(21.7)
1982	48.2	8.0	32.6	(9.4)	(23.2)	5.9	5.3	100.0	(76.8)	(23.2)
1983	48.1	6.2	34.8	(10.3)	(24.5)	5.9	3.0	100.0	(75.5)	(24.5)
1984	44.8	8.5	35.9	(11.0)	(24.9)	5.6	5.2	100.0	(75.1)	(24.9)
1985	45.6	8.4	36.1	(10.8)	(25.4)	4.9	5.0	100.0	(74.6)	(25.4)
1986	45.4	8.2	36.9	(10.9)	(26.0)	4.3	5.2	100.0	(74.0)	(26.0)
1987	46.0	9.8	35.5	(10.5)	(25.0)	3.8	4.9	100.0	(75.0)	(25.0)
1988	44.1	10.4	36.8	(10.2)	(26.6)	3.9	4.8	100.0	(73.4)	(26.6)
1989	45.0	10.5	36.3	(9.7)	(26.6)	3.4	4.8	100.0	(73.4)	(26.6)
1990	45.3	9.1	36.9	(9.5)	(27.3)	3.4	5.4	100.0	(72.7)	(27.3)
1991 estimate	45.1	8.8	36.8	(9.5)	(27.3)	4.1	5.1	100.0	(72.7)	(27.3)
1992 estimate	45.5	8.7	36.9	(9.8)	(27.1)	4.1	4.8	100.0	(72.9)	(27.1)
1993 estimate	45.7	8.7	37.0	(10.0)	(27.0)	4.0	4.6	100.0	(73.0)	(27.0)
1994 estimate	46.4	8.8	36.7	(9.9)	(26.8)	3.8	4.3	100.0	(73.2)	(26.8)
1995 estimate	46.9	8.9	36.4	(9.8)	(26.6)	3.7	4.1	100.0	(73.4)	(26.6)
1996 estimate	47.5	8.9	36.4	(9.7)	(26.7)	3.1	4.1	100.0	(73.3)	(26.7)

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 1992.

TABLE 4.—RECEIPTS BY SOURCE AS PERCENTAGES OF GNP: 1934–1996

Fiscal year	Individual income taxes	Corporation income taxes	Social Insurance taxes and contributions			Excise taxes	Other	Total receipts		
			Total	(On-Budget)	(Off-Budget)			Total	(On-Budget)	(Off-Budget)
1934	0.7	0.6	(1)	(1)	....	2.2	1.3	4.9	(4.9)	....
1935	.8	.8	(1)	(1)	....	2.1	1.6	5.2	(5.2)	....
1936	.9	.9	0.1	(0.1)	....	2.1	1.1	5.0	(5.0)	....
1937	1.3	1.2	.7	(.4)	(.3)	2.2	.9	6.2	(5.9)	(.3)
1938	1.5	1.5	1.7	(1.3)	(.4)	2.1	.9	7.6	(7.2)	(.4)
1939	1.2	1.3	1.8	(1.2)	(.6)	2.1	.8	7.1	(6.6)	(.6)
1940	.9	1.2	1.9	(1.3)	(.6)	2.1	.7	6.8	(6.3)	(.6)
1941	1.2	1.9	1.7	(1.1)	(.6)	2.3	.7	7.7	(7.1)	(.6)
1942	2.3	3.3	1.7	(1.1)	(.6)	2.4	.6	10.3	(9.7)	(.6)
1943	3.7	5.4	1.7	(1.1)	(.6)	2.3	.5	13.7	(13.0)	(.6)
1944	9.8	7.3	1.7	(1.1)	(.6)	2.4	.5	21.7	(21.0)	(.6)
1945	8.6	7.5	1.6	(1.0)	(.6)	2.9	.5	21.3	(20.6)	(.6)
1946	7.6	5.6	1.5	(.9)	(.6)	3.3	.6	18.5	(17.9)	(.6)
1947	8.0	3.9	1.5	(.9)	(.7)	3.2	.6	17.2	(16.6)	(.7)
1948	7.8	3.9	1.5	(.9)	(.7)	3.0	.6	16.8	(16.1)	(.7)
1949	5.9	4.2	1.4	(.8)	(.6)	2.8	.5	14.9	(14.3)	(.6)
1950	5.9	3.9	1.6	(.8)	(.8)	2.8	.5	14.8	(14.0)	(.8)
1951	6.9	4.5	1.8	(.8)	(1.0)	2.7	.5	16.4	(15.4)	(1.0)
1952	8.2	6.2	1.9	(.8)	(1.0)	2.6	.5	19.3	(18.3)	(1.0)
1953	8.2	5.8	1.9	(.7)	(1.1)	2.7	.5	19.0	(17.9)	(1.1)
1954	8.0	5.7	2.0	(.7)	(1.2)	2.7	.5	18.9	(17.6)	(1.2)

1955	7.4	4.6	2.0	(.7)	(1.3)	2.4	.5	16.9	(15.6)	(1.3)
1956	7.7	5.0	2.2	(.7)	(1.5)	2.4	.5	17.8	(16.3)	(1.5)
1957	8.1	4.8	2.3	(.7)	(1.5)	2.4	.6	18.2	(16.6)	(1.5)
1958	7.7	4.5	2.5	(.7)	(1.8)	2.4	.7	17.7	(15.9)	(1.8)
1959	7.6	3.6	2.4	(.7)	(1.7)	2.2	.6	16.5	(14.7)	(1.7)
1960	8.0	4.2	2.9	(.8)	(2.1)	2.3	.8	18.3	(16.2)	(2.1)
1961	8.0	4.0	3.2	(.8)	(2.3)	2.3	.7	18.2	(15.9)	(2.3)
1962	8.2	3.7	3.1	(.9)	(2.2)	2.2	.7	17.9	(15.7)	(2.2)
1963	8.1	3.7	3.4	(1.0)	(2.4)	2.2	.7	18.1	(15.7)	(2.4)
1964	7.7	3.7	3.5	(.9)	(2.6)	2.2	.8	17.9	(15.3)	(2.6)
1965	7.3	3.8	3.3	(.8)	(2.5)	2.2	.9	17.4	(14.9)	(2.5)
1966	7.5	4.1	3.5	(.9)	(2.6)	1.8	.9	17.7	(15.1)	(3.1)
1967	7.7	4.3	4.1	(1.0)	(3.1)	1.7	.9	18.7	(15.1)	(2.9)
1968	8.1	3.4	4.0	(1.1)	(2.9)	1.7	.9	18.0	(15.1)	(2.9)
1969	9.4	3.9	4.2	(1.1)	(3.1)	1.6	.9	20.1	(17.0)	(3.1)
1970	9.1	3.3	4.5	(1.1)	(3.4)	1.6	1.0	19.5	(16.1)	(3.4)
1971	8.2	2.5	4.5	(1.1)	(3.4)	1.6	1.0	17.7	(14.3)	(3.4)
1972	8.2	2.8	4.6	(1.1)	(3.5)	1.3	1.1	18.0	(14.5)	(3.5)
1973	8.1	2.8	4.9	(1.3)	(3.6)	1.3	.9	18.0	(14.4)	(3.6)
1974	8.4	2.7	5.3	(1.5)	(3.8)	1.2	1.0	18.6	(14.8)	(3.8)
1975	8.0	2.7	5.6	(1.5)	(4.1)	1.1	1.0	18.3	(14.2)	(4.1)
1976	7.7	2.4	5.3	(1.4)	(3.9)	1.0	1.0	17.6	(13.6)	(3.9)
TQ	8.6	1.9	5.6	(1.6)	(4.0)	1.0	1.0	18.1	(14.1)	(4.0)
1977	8.2	2.8	5.5	(1.5)	(4.0)	.9	1.0	18.4	(14.4)	(4.0)
1978	8.3	2.8	5.6	(1.6)	(3.9)	.8	.9	18.4	(14.5)	(3.9)
1979	8.9	2.7	5.7	(1.7)	(4.0)	.8	.9	18.9	(14.9)	(4.0)
1980	9.1	2.4	5.9	(1.7)	(4.2)	.9	1.0	19.4	(15.1)	(4.2)

TABLE 4.—RECEIPTS BY SOURCE AS PERCENTAGES OF GNP: 1934–1996—Continued

Fiscal year	Individual income taxes	Corporation income taxes	Social Insurance taxes and contributions			Excise taxes	Other	Total receipts		
			Total	(On-Budget)	(Off-Budget)			Total	(On-Budget)	(Off-Budget)
1981	9.6	2.0	6.1	(1.8)	(4.4)	1.4	1.0	20.1	(15.7)	(4.4)
1982	9.5	1.6	6.4	(1.8)	(4.6)	1.2	1.1	19.7	(15.1)	(4.6)
1983	8.7	1.1	6.3	(1.9)	(4.4)	1.1	.9	18.1	(13.6)	(4.4)
1984	8.1	1.5	6.5	(2.0)	(4.5)	1.0	.9	18.1	(13.6)	(4.5)
1985	8.5	1.6	6.7	(2.0)	(4.7)	.9	.9	18.6	(13.9)	(4.7)
1986	8.3	1.5	6.8	(2.0)	(4.8)	.8	1.0	18.4	(13.6)	(4.8)
1987	8.9	1.9	6.8	(2.0)	(4.8)	.7	.9	19.3	(14.5)	(4.8)
1988	8.4	2.0	7.0	(1.9)	(5.0)	.7	.9	19.0	(13.9)	(5.0)
1989	8.7	2.0	7.0	(1.9)	(5.1)	.7	.9	19.2	(14.1)	(5.1)
1990	8.6	1.7	7.0	(1.8)	(5.2)	.7	1.0	19.1	(13.9)	(5.2)
1991 estimate	8.8	1.7	7.2	(1.8)	(5.3)	.8	1.0	19.4	(14.1)	(5.3)
1992 estimate	8.8	1.7	7.2	(1.9)	(5.3)	.8	.9	19.5	(14.2)	(5.3)
1993 estimate	8.9	1.7	7.2	(1.9)	(5.3)	.8	.9	19.5	(14.2)	(5.3)
1994 estimate	9.2	1.8	7.3	(2.0)	(5.3)	.8	.9	19.9	(14.5)	(5.3)
1995 estimate	9.4	1.8	7.3	(2.0)	(5.3)	.7	.8	20.0	(14.7)	(5.3)
1996 estimate	9.5	1.8	7.3	(1.9)	(5.3)	.6	.8	20.0	(14.6)	(5.3)

[1] 0.05 percent or less.

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 1992.

TABLE 5.—SUMMARY OF RECEIPTS, OUTLAYS, AND SURPLUSES OR DEFICITS (—): 1934–1996

[In millions of dollars]

Year	Total			Budget			Off-budget		
	Receipts	Outlays	Surplus or deficit (—)	Receipts	Outlays	Surplus or deficit (—)	Receipts	Outlays	Surplus or deficit (—)
1934	2,995	6,541	—3,586	2,955	6,541	—3,586			
1935	3,609	6,412	—2,803	3,609	6,412	—2,803			
1936	3,923	8,228	—4,304	3,923	8,228	—4,304			
1937	5,387	7,580	—2,193	5,122	7,582	—2,460	265	—2	267
1938	6,751	6,840	—89	6,364	6,850	—486	387	—10	397
1939	6,295	9,141	—2,846	5,792	9,154	—3,362	503	—13	516
1940	6,548	9,468	—2,920	5,998	9,482	—3,484	550	—14	564
1941	8,712	13,653	—4,941	8,024	13,618	—5,594	688	35	653
1942	14,634	35,137	—20,503	13,738	35,071	—21,333	896	66	830
1943	24,001	78,555	—54,554	22,871	78,466	—55,595	1,130	89	1,041
1944	43,747	91,304	—47,557	42,455	91,190	—48,735	1,292	114	1,178
1945	45,159	92,712	—47,553	43,849	92,569	—48,720	1,310	143	1,167
1946	39,296	55,232	—15,936	38,057	55,022	—16,964	1,238	210	1,028
1947	38,514	34,496	—4,018	37,055	34,193	—2,861	1,459	303	1,157
1948	41,560	29,764	—11,796	39,944	29,396	—10,548	1,616	368	1,268
1949	39,415	38,835	—580	37,724	38,408	—684	1,690	427	1,263
1950	39,443	42,562	—3,119	37,336	42,038	—4,702	2,106	524	1,583
1951	51,616	45,514	—6,102	48,496	44,237	—4,259	3,120	1,277	1,843
1952	66,167	67,686	—1,519	62,573	65,956	—3,383	3,594	1,730	1,864
1953	69,608	76,101	—6,493	65,511	73,771	—8,259	4,097	2,330	1,766

TABLE 5.—SUMMARY OF RECEIPTS, OUTLAYS, AND SURPLUSES OR DEFICITS (–): 1934–1996—Continued

[In millions of dollars]

Year	Total			Budget			Off-budget		
	Receipts	Outlays	Surplus or deficit (–)	Receipts	Outlays	Surplus or deficit (–)	Receipts	Outlays	Surplus or deficit (–)
1954	69,701	70,855	–1,154	65,112	67,943	–2,831	4,589	2,912	1,677
1955	65,451	68,444	–2,993	60,370	64,461	–4,091	5,081	3,983	1,098
1956	74,587	70,640	–3,947	68,162	65,668	2,494	6,425	4,972	1,452
1957	79,990	76,578	–3,412	73,201	70,562	2,639	6,789	6,016	773
1958	79,636	82,405	–2,769	71,587	74,902	–3,315	8,049	7,503	546
1959	79,249	92,098	–12,849	70,953	83,102	–12,149	8,296	8,996	–700
1960	92,492	92,191	301	81,851	81,341	–510	10,641	10,850	–209
1961	94,388	97,723	–3,335	82,279	86,046	–3,766	12,109	11,677	431
1962	99,676	106,821	–7,146	87,405	93,286	–5,881	12,271	13,535	–1,265
1963	106,560	111,316	–4,756	92,385	96,352	–3,966	14,175	14,964	–789
1964	112,613	118,528	–5,915	96,248	102,794	–6,546	16,366	15,734	632
1965	116,817	118,228	–1,411	100,094	101,699	–1,605	16,723	16,529	194
1966	130,385	134,532	–3,698	111,749	114,817	–3,068	19,085	19,715	–630
1967	148,822	157,464	–8,643	124,420	137,040	–12,620	24,401	20,424	3,978
1968	152,973	178,134	–25,161	128,056	155,798	–27,742	24,917	22,336	2,581
1969	186,882	183,640	3,242	157,928	158,436	–507	28,953	25,204	3,749
1970	192,807	195,649	–2,842	159,348	168,042	–8,694	33,459	27,607	5,852
1971	187,139	210,172	–23,033	151,294	177,346	–26,052	35,845	32,826	3,019
1972	207,309	230,681	–23,373	167,402	193,824	–26,423	39,907	36,857	3,050
1973	230,799	245,707	–14,908	184,715	200,118	–15,403	46,084	45,589	495

1974	263,224	269,359	−6,135	209,299	217,270	−7,971	53,925	52,089	1,836
1975	279,090	332,332	−53,242	216,633	271,892	−55,260	62,458	60,440	2,018
1976	298,060	371,779	−73,719	231,671	302,170	−70,499	66,389	69,609	−3,220
TQ	81,232	95,973	−14,741	63,216	76,552	−13,336	18,016	19,421	−1,405
1977	355,559	409,203	−53,644	278,741	328,487	−49,745	76,817	80,716	−3,899
1978	399,561	458,729	−59,168	314,169	369,072	−54,902	85,391	89,657	−4,266
1979	463,302	503,464	−40,162	365,309	403,486	−38,178	97,994	99,978	−1,984
1980	517,112	590,920	−73,808	403,903	476,591	−72,689	113,209	114,329	−1,120
1981	599,272	678,209	−78,936	469,097	543,013	−73,916	130,176	135,196	−5,020
1982	617,766	745,706	−127,940	474,299	594,302	−120,003	143,467	151,404	−7,937
1983	600,562	808,327	−207,764	453,242	661,219	−207,977	147,320	147,108	212
1984	666,457	851,781	−185,324	500,382	685,968	−185,586	166,075	165,813	262
1985	734,057	946,316	−212,260	547,886	769,509	−221,623	186,171	176,807	9,363
1986	769,091	990,258	−221,167	568,862	806,760	−237,898	200,228	183,498	16,731
1987	854,143	1,003,830	−149,687	640,741	809,998	−169,257	213,402	193,832	19,570
1988	908,954	1,064,044	−155,090	667,463	861,352	−193,890	241,491	202,691	38,800
1989	990,691	1,142,643	−151,951	727,026	931,732	−204,706	263,666	210,911	52,754
1990	1,031,308	1,251,703	−220,396	749,652	1,026,638	−276,986	281,656	225,065	56,590
1991 estimate	1,091,440	1,409,563	−318,123	793,153	1,171,658	−378,505	298,287	237,905	60,382
1992 estimate	1,165,029	1,445,902	−280,874	849,775	1,194,205	−344,430	315,254	251,697	63,557
1993 estimate	1,252,669	1,454,185	−201,515	913,969	1,187,807	−273,837	338,700	266,378	72,322
1994 estimate	1,365,282	1,427,055	−61,772	999,783	1,150,218	−150,435	365,499	276,837	88,662
1995 estimate	1,467,346	1,470,276	−2,930	1,077,499	1,183,811	−106,312	389,847	286,465	103,382
1996 estimate	1,560,748	1,540,847	19,901	1,143,535	1,246,124	−102,589	417,213	294,723	122,490

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 1992.

TABLE 6.—SUMMARY OF RECEIPTS, OUTLAYS, AND SURPLUSES OR DEFICITS (—) AS PERCENTAGES OF GNP: 1934–1996

Year	GNP (in billions of dollars)	Total			Budget			Off-budget		
		Receipts	Outlays	Surplus or deficit (—)	Receipts	Outlays	Surplus or deficit (—)	Receipts	Outlays	Surplus or deficit (—)
1934	60.8	4.9	10.8	—5.9	4.9	10.8	—5.9	...	...	...
1935	69.2	5.2	9.3	—4.1	5.2	9.3	—4.1	...	...	...
1936	78.0	5.0	10.6	—5.5	5.0	10.6	—5.5	...	...	...
1937	87.2	6.2	8.7	—2.5	5.9	8.7	—2.8	.3	—(1)	0.3
1938	88.4	7.6	7.7	—.1	7.2	7.8	—.5	.4	—(1)	.4
1939	88.4	7.1	10.3	—3.2	6.6	10.4	—3.8	.6	—(1)	.6
1940	95.8	6.8	9.9	—3.0	6.3	9.9	—3.6	.6	—(1)	.6
1941	113.0	7.7	12.1	—4.4	7.1	12.1	—5.0	.6	(1)	.6
1942	142.2	10.3	24.7	—14.4	9.7	24.7	—15.0	.6	(1)	.6
1943	175.8	13.7	44.7	—31.0	13.0	44.6	—31.6	.6	.1	.6
1944	202.0	21.7	45.2	—23.5	21.0	45.1	—24.1	.6	.1	.6
1945	212.4	21.3	43.6	—22.4	20.6	43.6	—22.9	.6	.1	.5
1946	212.9	18.5	25.9	—7.5	17.9	25.8	—8.0	.6	.1	.5
1947	223.6	17.2	15.4	1.8	16.6	15.3	1.3	.7	.1	.5
1948	247.8	16.8	12.0	4.8	16.1	11.9	4.3	.7	.1	.5
1949	263.9	14.9	14.7	.2	14.3	14.6	—.3	.6	.2	.5
1950	266.8	14.8	16.0	—1.2	14.0	15.8	—1.8	.8	.2	.6
1951	315.0	16.4	14.4	1.9	15.4	14.0	1.4	1.0	.4	.6
1952	342.4	19.3	19.8	—.4	18.3	19.3	—1.0	1.0	.5	.5
1953	365.6	19.0	20.8	—1.8	17.9	20.2	—2.3	1.1	.6	.5
1954	369.5	18.9	19.2	—.3	17.6	18.4	—.8	1.2	.8	.5

1955	386.4	16.9	17.7	−.8	15.6	16.7	−1.1	1.3	1.0	.3
1956	418.1	17.8	16.9	.9	16.3	15.7	.6	1.5	1.2	.3
1957	440.5	18.2	17.4	.8	16.6	16.0	.6	1.5	1.4	.2
1958	450.2	17.7	18.3	−.6	15.9	16.6	−.7	1.8	1.7	.1
1959	481.5	16.5	19.1	−2.7	14.7	17.3	−2.5	1.7	1.9	−.1
1960	506.7	18.3	18.2	.1	16.2	16.1	.1	2.1	2.1	−(1)
1961	518.2	18.2	18.9	−.6	15.9	16.6	−.7	2.3	2.3	.1
1962	557.7	17.9	19.2	−1.3	15.7	16.7	−1.1	2.2	2.4	−.2
1963	587.8	18.1	18.9	−.8	15.7	16.4	−.7	2.4	2.5	−.1
1964	629.2	17.9	18.8	−.9	15.3	16.3	−1.0	2.6	2.5	.1
1965	672.6	17.4	17.6	−.2	14.9	15.1	−.2	2.5	2.5	(1)
1966	739.0	17.7	18.2	−.5	15.1	15.5	−.4	2.6	2.7	−.1
1967	794.6	18.7	19.8	−1.1	15.7	17.2	−1.6	3.1	2.6	.5
1968	849.4	18.0	21.0	−3.0	15.1	18.3	−3.3	2.9	2.6	.3
1969	929.5	20.1	19.8	.3	17.0	17.0	−.1	3.1	2.7	.4
1970	990.2	19.5	19.8	−.3	16.1	17.0	−.9	3.4	2.8	.6
1971	1,055.9	17.7	19.9	−2.2	14.3	16.8	−2.5	3.4	3.1	.3
1972	1,153.1	18.0	20.0	−2.0	14.5	16.8	−2.3	3.5	3.2	.3
1973	1,281.4	18.0	19.2	−1.2	14.4	15.6	−1.2	3.6	3.6	(1)
1974	1,416.5	18.6	19.0	−.4	14.8	15.3	−.6	3.8	3.7	.1
1975	1,522.5	18.3	21.8	−3.5	14.2	17.9	−3.6	4.1	4.0	.1
1976	1,698.2	17.6	21.9	−4.3	13.6	17.8	−4.2	3.9	4.1	−.2
TQ	448.7	18.1	21.4	−3.3	14.1	17.1	−3.0	4.0	4.3	−.3
1977	1,933.0	18.4	21.2	−2.8	14.4	17.0	−2.6	4.0	4.2	−.2
1978	2,171.8	18.4	21.1	−2.7	14.5	17.0	−2.5	3.9	4.1	−.2
1979	2,447.8	18.9	20.6	−1.6	14.9	16.5	−1.6	4.0	4.1	−.1
1980	2,670.6	19.4	22.1	−2.8	15.1	17.8	−2.7	4.2	4.3	−(1)

TABLE 6.—SUMMARY OF RECEIPTS, OUTLAYS, AND SURPLUSES OR DEFICITS (—) AS PERCENTAGES OF GNP: 1934–1996—Continued

Year	GNP (in billions of dollars)	Total			Budget			Off-budget		
		Receipts	Outlays	Surplus or deficit (—)	Receipts	Outlays	Surplus or deficit (—)	Receipts	Outlays	Surplus or deficit (—)
1981	2,986.4	20.1	22.7	—2.6	15.7	18.2	—2.5	4.4	4.5	—.2
1982	3,139.1	19.7	23.8	—4.1	15.1	18.9	—3.8	4.6	4.8	—.3
1983	3,321.9	18.1	24.3	—6.3	13.6	19.9	—6.3	4.4	4.4	([1])
1984	3,687.7	18.1	23.1	—5.0	13.6	18.6	—5.0	4.5	4.5	([1])
1985	3,952.4	18.6	23.9	—5.4	13.9	19.5	—5.6	4.7	4.5	.2
1986	4,180.9	18.4	23.7	—5.3	13.6	19.3	—5.7	4.8	4.4	.4
1987	4,430.2	19.3	22.7	—3.4	14.5	18.3	—3.8	4.8	4.4	.4
1988	4,792.2	19.0	22.2	—3.2	13.9	18.0	—4.0	5.0	4.2	.8
1989	5,151.3	19.2	22.2	—2.9	14.1	18.1	—4.0	5.1	4.1	1.0
1990	5,405.6	19.1	23.2	—4.1	13.9	19.0	—5.1	5.2	4.2	1.0
1991 estimate	5,615.8	19.4	25.1	—5.7	14.1	20.9	—6.7	5.3	4.2	1.1
1992 estimate	5,985.5	19.5	24.2	—4.7	14.2	20.0	—5.8	5.3	4.2	1.1
1993 estimate	6,424.0	19.5	22.6	—3.1	14.2	18.5	—4.3	5.3	4.1	1.1
1994 estimate	6,875.5	19.9	20.8	—.9	14.5	16.7	—2.2	5.3	4.0	1.3
1995 estimate	7,334.5	20.0	20.0	—([1])	14.7	16.1	—1.4	5.3	3.9	1.4
1996 estimate	7,808.8	20.0	19.7	.3	14.6	16.0	—1.3	5.3	3.8	1.6

[1] 0.05 percent or less.

Note: Fiscal year GNP data for years 1947 to current are those produced by the Bureau of Economic Analysis, Department of Commerce from seasonally unadjusted quarterly data. For years prior to 1947 the Department produces calendar year estimates but not fiscal year or quarterly estimates. For fiscal years prior to 1947 these GNP estimates are the average of the data for the two calendar years; for 1947, they use two quarters data and one half of calendar year data.

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 1992.

TABLE 7.—SUMMARY OF RECEIPTS, OUTLAYS, AND SURPLUSES OR DEFICITS (—) IN CURRENT DOLLARS, CONSTANT (FISCAL YEAR 1982) DOLLARS, AND AS PERCENTAGES OF GNP: 1940–1996

[Dollar amounts in billions]

Fiscal year	In current dollars			In constant fiscal year 1982 dollars			Addendum: composite deflator	As percentages of GNP		
	Receipts	Outlays	Surplus or deficit (—)	Receipts	Outlays	Surplus or deficit (—)		Receipts	Outlays	Surplus or deficit (—)
1940	6.5	9.5	—2.9	57.5	83.2	—25.7	0.1138	6.8	9.9	—3.0
1941	8.7	13.7	—4.9	71.8	112.6	—40.7	.1213	7.7	12.1	—4.4
1942	14.6	35.1	—20.5	108.5	260.5	—152.0	.1349	10.3	24.7	—14.4
1943	24.0	78.6	—54.6	162.0	530.1	—368.1	.1482	13.7	44.7	—31.0
1944	43.7	91.3	—47.6	305.7	638.0	—332.3	.1431	21.7	45.2	—23.5
1945	45.2	92.7	—47.6	325.8	668.9	—343.1	.1386	21.3	43.6	—22.4
1946	39.3	55.2	—15.9	295.5	415.3	—119.8	.1330	18.5	25.9	—7.5
1947	38.5	34.5	4.0	237.6	212.8	24.8	.1621	17.2	15.4	1.8
1948	41.6	29.8	11.8	220.9	158.2	62.7	.1881	16.8	12.0	4.8
1949	39.4	38.8	.6	205.5	202.5	3.0	.1918	14.9	14.7	.2
1950	39.4	42.6	—3.1	204.4	220.5	—16.2	.1930	14.8	16.0	—1.2
1951	51.6	45.5	6.1	284.2	250.6	33.6	.1816	16.4	14.4	1.9
1952	66.2	67.7	—1.5	341.4	349.3	—7.8	.1938	19.3	19.8	—.4
1953	69.6	76.1	—6.5	336.1	367.5	—31.4	.2071	19.0	20.8	—1.8
1954	69.7	70.9	—1.2	325.6	330.9	—5.4	.2141	18.9	19.2	—.3
1955	65.5	68.4	—3.0	297.5	311.1	—13.6	.2200	16.9	17.7	—.8
1956	74.6	70.6	3.9	323.3	306.2	17.1	.2307	17.8	16.9	.9
1957	80.0	76.6	3.4	333.0	318.8	14.2	.2402	18.2	17.4	.8
1958	79.6	82.4	—2.8	311.9	322.8	—10.8	.2553	17.7	18.3	—.6

TABLE 7.—SUMMARY OF RECEIPTS, OUTLAYS, AND SURPLUSES OR DEFICITS (—) IN CURRENT DOLLARS, CONSTANT (FISCAL YEAR 1982) DOLLARS, AND AS PERCENTAGES OF GNP: 1940–1996—Continued

[Dollar amounts in billions]

Fiscal year	In current dollars			In constant fiscal year 1982 dollars			Addendum: composite deflator	As percentages of GNP		
	Receipts	Outlays	Surplus or deficit (—)	Receipts	Outlays	Surplus or deficit (—)		Receipts	Outlays	Surplus or deficit (—)
1959	79.2	92.1	—12.8	298.5	346.9	—48.8	.2655	16.5	19.1	—2.7
1960	92.5	92.2	.3	341.6	340.4	1.1	.2708	18.3	18.2	.1
1961	94.4	97.7	—3.3	342.5	354.6	—12.1	.2756	18.2	18.9	—.6
1962	99.7	106.8	—7.1	358.0	383.7	—25.7	.2784	17.9	19.2	—1.3
1963	106.6	111.3	—4.8	368.2	384.6	—16.4	.2894	18.1	18.9	—.8
1964	112.6	118.5	5.9	382.8	402.9	—20.1	.2942	17.9	18.8	—.9
1965	116.8	118.2	—1.4	389.9	394.6	—4.7	.2996	17.4	17.6	—.2
1966	130.8	134.5	—3.7	419.3	431.2	—11.9	.3120	17.7	18.2	—.5
1967	148.8	157.5	—8.6	461.6	488.4	—26.8	.3224	18.7	19.8	—1.1
1968	153.0	178.1	—25.2	451.2	525.5	—74.2	.3390	18.0	21.0	—3.0
1969	186.9	183.6	—3.2	519.4	510.4	9.0	.3598	20.1	19.8	.3
1970	192.8	195.6	—2.8	502.0	509.4	—7.4	.3841	19.5	19.8	—.3
1971	187.1	210.2	—23.0	453.6	509.4	—55.8	.4126	17.7	19.9	—2.2
1972	207.3	230.7	—23.4	474.2	527.6	—53.5	.4372	18.0	20.0	—2.0
1973	230.8	245.7	—14.9	495.5	527.5	—32.0	.4658	18.0	19.2	—1.2
1974	263.2	269.4	—6.1	516.6	528.7	—12.0	.5095	18.6	19.0	—.4
1975	279.1	332.3	—53.2	492.1	586.0	—93.9	.5671	18.3	21.8	—3.5
1976	298.1	371.8	—73.7	488.9	609.8	—120.9	.6097	17.6	21.9	—4.3

TQ	81.2	96.0	−14.7	129.0	152.4	−23.4	.6298	18.1	21.4	−3.3
1977	355.6	409.2	−53.6	541.0	622.6	−81.6	.6572	18.4	21.2	−2.8
1978	399.6	458.7	−59.2	568.0	652.2	−84.1	.7034	18.4	21.2	−2.7
1979	463.3	503.5	−40.2	607.5	660.2	−52.7	.7626	18.9	20.6	−1.6
1980	517.1	590.9	−73.8	611.7	699.1	−87.3	.8453	19.4	22.1	−2.8
1981	599.3	678.2	−78.9	642.0	726.5	−84.6	.9335	20.1	22.7	−2.6
1982	617.8	745.7	−127.9	617.8	745.7	−127.9	1.0000	19.7	23.8	−4.1
1983	600.6	808.3	−207.8	575.8	775.0	−199.2	1.0430	18.1	24.3	−6.3
1984	666.5	851.8	−185.3	616.6	788.1	−171.5	1.0808	18.1	23.1	−5.0
1985	734.1	946.3	−212.3	659.1	849.6	−190.6	1.1138	18.6	23.9	−5.4
1986	769.1	990.3	−221.2	674.2	868.0	−193.9	1.1408	18.4	23.7	−5.3
1987	854.1	1,003.8	−149.7	730.1	858.0	−127.9	1.1699	19.3	22.7	−3.4
1988	909.0	1,064.0	−155.1	751.4	879.6	−128.2	1.2097	19.0	22.2	−3.2
1989	990.7	1,142.6	−152.0	786.5	907.1	−120.6	1.2597	19.2	22.2	−2.9
1990	1,031.3	1,251.7	−220.4	787.3	955.5	−168.2	1.3100	19.1	23.2	−4.1
1991 estimate	1,091.4	1,409.6	−318.1	790.7	1,021.1	−230.5	1.3804	19.4	25.1	−5.7
1992 estimate	1,165.0	1,445.9	−280.9	809.1	1,004.2	−195.1	1.4399	19.5	24.2	−4.7
1993 estimate	1,252.7	1,454.2	−201.5	836.8	971.4	−134.6	1.4970	19.5	22.6	−3.1
1994 estimate	1,365.3	1,427.1	−61.8	879.5	919.3	−39.8	1.5524	19.9	20.8	−.9
1995 estimate	1,467.3	1,470.3	−2.9	912.5	914.3	−1.8	1.6081	20.0	20.0	−([1])
1996 estimate	1,560.7	1,540.8	19.9	937.8	925.9	12.0	1.6642	20.0	19.7	.3

[1] 0.05 percent or less.

Source: Office of Management and Budget, Budget of the United States Government, Fiscal Year 1992.

PART V. FEDERAL TAX EXPENDITURES

The individual and corporate income taxes contain numerous provisions granting favorable tax treatment for income expended on certain activities, or earned in certain ways. These favorable tax provisions take the form of exclusions, credits, deductions, preferential tax rates, or deferrals of tax liability. In all cases, the purpose of the favorable tax treatment is to encourage taxpayers to undertake favored activities. Collectively, the revenue lost because of tax reductions owing to favorable tax treatment is known as tax expenditures.

The concept of tax expenditures is based on the premise that tax reductions enacted to favor certain activities are analogous to direct governmental expenditures paid through spending programs for those activities. Like direct expenditures, tax expenditures for an activity have budgetary effects; unless offset by tax increases or spending cuts, they increase the Federal deficit. And like direct expenditures, tax expenditures result in increased disposable income for beneficiaries of the expenditure. According to this reasoning, tax expenditures are analogous to entitlement expenditure programs, under which expenditures are made without other specific legislative authorization or appropriation. Like spending under entitlement programs, tax expenditures are available to any individual or corporation that meets the statutory and regulatory criteria established for eligibility for program participation. Under this view, tax expenditures are entitlement programs administered by the Internal Revenue Service.

Some observers challenge the entire theory of "tax expenditures." Under this dissenting view, the theory of tax expenditures is based on the flawed premise that the citizen's income is "owned" by the Government. These observers argue that the concept of tax expenditures arises only if one adopts this faulty premise and thus believes that any money not taken in taxes is "spent" by the Government.

Supporters of the concept of tax expenditures respond that the term is not applied to all income not taken by the Government in taxes. Rather, it is only applied to specific exemptions and other tax provisions which benefit specific activities without regard to theoretical principles governing the definition of income. These specific incentives, they argue, are indistinguishable for economic and budgetary purposes from direct Government outlays for preferred activities.

The following tax expenditure estimates were prepared by the staff of the Joint Committee on Taxation.[1] (See: Joint Committee on Taxation, "Estimates of Federal Tax Expenditures for Fiscal Years 1992-1996," (JCS-4-91) March 11, 1991, herein cited as March 11, 1991, tax expenditure report). In preparing its measurement of tax expenditures, the Joint Committee staff follows the definition of tax expenditures that appears in the Congressional Budget Act of 1974: " * * * those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption or deduction from gross income, or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." (Congressional Budget and Impoundment Control Act of 1974, P.L. 93-344, section 3(a)3.)

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[1] The estimates were prepared in cooperation with the staff of the Office of Tax Analysis in the Treasury Department.

The legislative history of the Congressional Budget Act of 1974 indicates that tax expenditures are to be defined with reference to a normal income tax structure. According to the definition used by the staff of the Joint Committee on Taxation, the normal income tax structure of the individual income tax includes one personal exemption for each taxpayer, and one for each dependent; the standard deduction, which serves as a general minimum deduction for all taxpayers; the existing tax rate schedule; the limit on using passive losses to offset other income; and deductions for costs incurred in producing net income, e.g., investment expenses or the cost of the tools that a mechanic purchases for his job. (March 11, 1991, tax expenditure report, page 3).

In addition to preparing estimates of Federal tax expenditures, the staff of the Joint Committee on Taxation has written an extensive discussion of the measurement of tax expenditures, problems in measurement, and measurement issues on which they differ with other estimators. This discussion also appears in the March 11, 1991, tax expenditure report. In addition, other tables included in the March 11, 1991, tax expenditure report provide distributional data for tax expenditures.

Table 1 shows an estimate of Federal tax expenditures for fiscal years 1992 through 1996. The tax expenditures are grouped in this table in the same functional categories as outlays in the Federal budget. Estimates are shown separately for individuals and corporations. The addendum to table 1 shows the sum of tax expenditures for individuals and corporations for fiscal years 1992 through 1996. As can be seen in the addendum, tax expenditures total $374.9 billion for fiscal year 1992.

TABLE 1.—TAX EXPENDITURE ESTIMATES BY BUDGET FUNCTION, FISCAL YEARS 1992–96

[Billions of dollars]

Function	Corporations					Individuals					Total 1992–96
	1992	1993	1994	1995	1996	1992	1993	1994	1995	1996	
National defense											
Exclusion of benefits and allowances to Armed Forces personnel						2.0	2.1	2.2	2.3	2.3	10.9
Exclusion of military disability benefits						0.1	0.1	0.1	0.1	0.1	0.5
International affairs											
Exclusion of income earned abroad by U.S. citizens						1.5	1.5	1.6	1.6	1.7	7.9
Exclusion of certain allowances for Federal employees abroad						0.2	0.2	0.2	0.2	0.2	1.0
Exclusion of income of foreign sales corporations (FSCs)	0.9	1.0	1.1	1.1	1.2						5.3
Deferral of income of controlled foreign corporations	0.2	0.2	0.3	0.3	0.3						1.2
Inventory property sales source rule exception	3.2	3.4	3.7	3.8	3.9						18.0
Interest allocation rules exception for certain nonfinancial institutions	0.2	0.2	0.2	0.2	0.2						0.9
General science, space, and technology											
Expensing of research and development expenditures	1.6	1.7	1.9	2.0	2.1						9.3
Credit for increasing research activities	0.7	0.8	0.8	0.8	0.9						4.0
Energy											
Expensing of exploration and development costs:											
Oil and gas	(2)	0.1	0.1	0.2	0.2	0.6	0.7	0.7	0.8	0.8	4.2
Other fuels	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.2

TABLE 1.—TAX EXPENDITURE ESTIMATES BY BUDGET FUNCTION, FISCAL YEARS 1992–96—Continued

[Billions of dollars]

Function	Corporations					Individuals					Total 1992–96
	1992	1993	1994	1995	1996	1992	1993	1994	1995	1996	
Excess of percentage over cost depletion:											
Oil and gas	0.1	0.1	0.1	0.2	0.2	0.4	0.4	0.5	0.5	0.6	3.1
Other fuels	0.2	0.2	0.2	0.2	0.2	(1)	(1)	(1)	(1)	(1)	1.1
Credit for enhanced oil recovery costs	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.2
Alternative fuel production credit	0.3	0.4	0.4	0.4	0.3	0.1	0.1	0.1	0.1	0.1	2.4
Alcohol fuel credits [3]	0.1	0.1	0.2	0.2	0.3	....	....	....	....	....	1.0
Exclusion of interest on State and local government industrial development bonds for energy production facilities	(2)	(2)	(2)	(2)	(2)	0.2	0.2	0.2	0.2	0.2	1.0
Expensing of tertiary injectants	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.1
Business energy tax credits	(1)	(2)	(2)	....	....	....	....	....	....	....	(1)
Natural resources and environment											
Expensing of exploration and development costs, nonfuel minerals	(1)	(1)	0.1	0.1	0.1	(1)	(1)	(1)	(1)	(1)	0.4
Excess of percentage over cost depletion, nonfuel minerals	0.3	0.3	0.3	0.3	0.3	(1)	(1)	(1)	(1)	(1)	1.6
Investment credit and 7-year amortization for reforestation expenditures	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.1
Expensing multiperiod timber-growing costs	0.4	0.4	0.4	0.4	0.5	(1)	(1)	(1)	(1)	(1)	2.2
Exclusion of interest on State and local government sewage, water, and hazardous waste facilities bonds	−0.4	−0.4	−0.4	−0.5	−0.5	1.8	1.9	2.0	2.0	2.1	7.6
Investment tax credit for rehabilitation of historic structures	(1)	(1)	(1)	(1)	(1)	0.1	0.1	0.1	0.1	0.1	0.5

Special rules for mining reclamation reserves	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.2
Agriculture											
Expensing certain multiperiod production costs	(1)	(1)	(1)	(1)	(1)	0.2	0.2	0.2	0.2	0.2	1.2
Deductibility of patronage dividends and certain other items of cooperatives	0.3	0.3	0.3	0.4	0.4	−0.1	−0.1	−0.1	−0.1	−0.1	1.4
Exclusion of cost-sharing payments						(1)	(1)	(1)	(1)	(1)	0.1
Exclusion of cancellation of indebtedness income of farmers						0.1	0.1	0.1	0.1	0.1	0.5
Cash accounting for agriculture	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	1.5
Commerce and housing											
Financial institutions:											
Bad-debt reserves of financial institutions	0.1	0.1	0.2	0.2	0.2						0.8
Merger rules for banks and thrift institutions	2.6	1.7	1.2	0.9	0.6						7.0
Exemption of credit union income	0.6	0.7	0.8	0.9	0.9						3.9
Insurance companies:											
Exclusion of investment income on life insurance and annuity contracts	0.1	0.1	0.1	0.1	0.1	7.8	8.5	9.3	10.2	11.2	47.4
Exclusion of investment income from structured settlement amounts	(1)	(1)	(1)	(1)	(1)						0.1
Small life insurance company taxable income adjustment	0.1	0.1	0.1	0.1	0.1						0.5
Treatment of life insurance company reserves	0.7	0.7	0.8	0.8	0.9						3.8
Deduction of unpaid loss reserves for property and casualty insurance companies	1.6	1.4	1.3	1.1	1.0						6.4
Special alternative tax on small property and casualty insurance companies	(1)	(1)	(1)	(1)	(1)						0.1
Tax exemption for certain insurance companies	(1)	(1)	(1)	(1)	(1)						0.1
Special deduction for Blue Cross and Blue Shield companies	0.1	0.1	(1)	(1)	(1)						0.2

TABLE 1.—TAX EXPENDITURE ESTIMATES BY BUDGET FUNCTION, FISCAL YEARS 1992–96—Continued

[Billions of dollars]

Function	Corporations					Individuals					Total 1992–96
	1992	1993	1994	1995	1996	1992	1993	1994	1995	1996	
Housing:											
Deductibility of mortgage interest on owner-occupied residences	......	......	......	......	......	38.8	42.2	45.9	50.0	54.4	231.2
Deductibility of property tax on owner-occupied residences	......	......	......	......	......	11.0	12.3	13.6	15.2	16.9	69.0
Deferral of capital gains on sales of principal residences	......	......	......	......	......	11.5	12.1	12.7	13.6	15.5	65.3
Exclusion of capital gains on sales of principal residences for persons age 55 and over ($125,000 exclusion)	......	......	......	......	......	3.8	4.0	4.2	4.5	5.2	21.8
Exclusion of interest on State and local government bonds for owner-occupied housing	0.3	0.3	0.3	0.3	0.3	1.4	1.3	1.2	1.1	1.0	7.5
Depreciation of rental housing in excess of alternative depreciation system	1.1	1.1	1.1	1.2	1.2	0.5	0.5	0.6	0.6	0.6	8.5
Low-income housing tax credit	0.1	0.1	0.1	0.1	0.1	1.0	1.0	1.0	1.0	1.0	5.6
Exclusion of interest on State and local government bonds for rental housing	0.2	0.3	0.3	0.3	0.3	0.6	0.6	0.7	0.7	0.7	4.7
Other business and commerce:											
Maximum 28% tax rate on long-term capital gains	......	......	......	......	......	4.5	5.1	5.6	6.0	6.5	27.7
Depreciation on buildings other than rental housing in excess of alternative depreciation system	5.1	5.3	5.5	5.7	5.9	1.9	2.0	2.0	2.1	2.2	37.7

Depreciation on equipment in excess of alternative depreciation system	14.1	14.6	15.1	15.6	16.2	4.0	4.1	4.3	4.4	4.6	97.0
Investment credit other than ESOPs, rehabilitation of structures, reforestation, and energy property	0.9	0.3	0.1	0.1	0.1	0.1	(1)	(1)	(1)	(1)	1.6
Expensing up to $10,000 depreciable business property	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	1.0
Exclusion of capital gains at death:											
Capital gains at death	......	......	......	......	......	10.5	11.6	12.7	14.0	15.4	64.2
Carryover basis on gifts	......	......	......	......	......	1.1	1.3	1.4	1.4	1.5	6.7
Amortization of business startup costs	(1)	(1)	(1)	(1)	(1)	0.2	0.2	0.2	0.2	0.2	1.0
Reduced rates on first $75,000 of corporate taxable income	3.0	3.1	3.2	3.3	3.5	......	......	......	......	......	16.1
Permanent exemption from imputed interest rules	(1)	(1)	(1)	(1)	(1)	0.2	0.2	0.2	0.2	0.2	1.0
Expensing of magazine circulation expenditures	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.1
Special rules for magazine, paperback, and record returns	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.1
Deferral of gain on non-dealer installment sales	0.1	0.1	0.1	0.1	0.1	(1)	(1)	(1)	(1)	(1)	0.8
Completed contract rules	0.2	0.3	0.3	0.3	0.3	(1)	(1)	(1)	(1)	(1)	1.2
Cash accounting, other than agriculture	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.3
Exclusion of interest on State and local government small-issue bonds	−0.1	−0.1	−0.1	−0.1	−0.1	2.4	2.4	2.4	2.4	2.4	11.5
Deferral of gain on like-kind exchanges	0.3	0.3	0.3	0.4	0.4	0.2	0.2	0.2	0.2	0.2	2.7
Exception from net operating loss limitations for corporations in bankruptcy proceedings	0.2	0.2	0.2	0.2	0.2	......	......	......	......	......	1.0
Gain from sale or exchange to effectuate policies of the FCC	0.2	0.2	0.1	0.1	0.1	(1)	(1)	(1)	(1)	(1)	0.7

TABLE 1.—TAX EXPENDITURE ESTIMATES BY BUDGET FUNCTION, FISCAL YEARS 1992–96—Continued

[Billions of dollars]

Function	Corporations					Individuals					Total 1992–96
	1992	1993	1994	1995	1996	1992	1993	1994	1995	1996	
Exemption of RIC expenses from miscellaneous deduction floor						0.5	0.6	0.7	0.8	0.8	3.4
Transportation											
Deferral of tax on capital construction funds of shipping companies	0.1	0.1	0.1	0.1	0.1						0.5
Exclusion of interest on State and local government bonds for mass transit commuting vehicles	(2)	(2)	(2)	(2)	(2)	(1)	(1)	(1)	(1)	(1)	0.1
Exclusion of interest on State and local government bonds for high-speed inter-urban rail facilities	(2)	(2)	(2)	(2)	(2)	0.1	0.1	0.2	0.2	0.2	0.8
Community and regional development											
Investment credit for rehabilitation of structures, other than historic structures	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	0.4
Exclusion of interest on State and local government bonds for private airports and docks	−0.1	−0.1	−0.2	−0.2	−0.2	0.8	0.8	0.8	0.9	0.9	3.4
Education, training, employment, and social services											
Education and training:											
Exclusion of scholarship and fellowship income						0.6	0.6	0.6	0.7	0.7	3.2
Parental personal exemption for students age 19 to 23						0.3	0.3	0.4	0.5	0.5	2.0
Exclusion of interest on State and local government student loan bonds	(1)	(1)	(1)	(1)	(1)	0.4	0.4	0.4	0.4	0.4	2.0

Exclusion of interest on State and local government bonds for private educational facilities	(¹)	(¹)	(¹)	(¹)	(¹)	0.3	0.3	0.3	0.3	0.3	1.5
Deductibility of charitable contributions for education	0.5	0.6	0.6	0.6	0.6	1.6	1.7	1.9	2.0	2.1	12.2
Educational savings bonds						0.1	0.2	0.2	0.3	0.3	1.1
Employment:											
Targeted jobs tax credit	0.2	0.1	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)			0.4
Exclusion of employee meals and lodging (other than military)						0.8	0.8	0.9	0.9	0.9	4.3
Employee stock ownership plans (ESOPs)	0.9	1.0	1.1	1.2	1.2	(¹)	(¹)	(¹)	(¹)	(¹)	5.3
Exclusion for benefits provided under cafeteria plans						2.6	2.9	3.1	3.2	3.3	15.1
Exclusion of rental allowances for ministers' homes						0.2	0.2	0.2	0.2	0.3	1.1
Exclusion of miscellaneous fringe benefits						4.1	4.3	4.6	4.9	5.2	23.1
Exclusion of employee awards						0.1	0.1	0.1	0.1	0.1	0.6
Exclusion of income earned by benefit organizations:											
Supplemental unemployment benefits trusts						(¹)	(¹)	(¹)	(¹)	(¹)	0.1
Voluntary employees' beneficiary associations						0.5	0.5	0.5	0.5	0.6	2.7
Social services:											
Deductibility of charitable contributions, other than for education and health	0.5	0.6	0.6	0.6	0.6	12.5	13.3	14.2	15.1	16.1	74.1
Credit for child and dependent care expenses						3.1	3.3	3.4	3.5	3.7	17.0
Exclusion for employer-provided child care						0.3	0.4	0.5	0.5	0.6	2.3
Exclusion for certain foster care payments						(¹)	(¹)	(¹)	(¹)	(¹)	0.1
Expensing costs of removing architectural barriers	0.1	0.1	0.1	0.1	0.1	(¹)	(¹)	(¹)	(¹)	(¹)	0.3
Tax credit for disabled access expenditures	0.1	0.1	0.1	0.1	0.1						0.5

TABLE 1.—TAX EXPENDITURE ESTIMATES BY BUDGET FUNCTION, FISCAL YEARS 1992–96—Continued

[Billions of dollars]

Function	Corporations					Individuals					Total 1992–96
	1992	1993	1994	1995	1996	1992	1993	1994	1995	1996	
Health											
Exclusion of employer contributions for medical insurance premiums and medical care						37.7	41.3	45.1	49.0	53.2	226.4
Deductibility of medical insurance premiums by the self employed						0.1					0.1
Credit for child medical insurance premiums [4]						0.1	0.1	0.1	0.1	0.1	0.5
Deductibility of medical expenses						2.9	3.3	3.8	4.4	5.0	19.4
Exclusion of interest on State and local government bonds for private hospital facilities	0.1	0.1	0.1	0.1	0.1	2.6	2.9	3.2	3.5	3.7	16.4
Deductibility of charitable contributions for health	0.2	0.2	0.2	0.2	0.2	1.6	1.7	1.8	1.9	2.0	10.0
Tax credit for orphan drug research	([1])	([1])	([1])	([1])	([1])						([1])
Medicare											
Exclusion of untaxed medicare benefits:											
Hospital insurance						7.1	7.7	8.3	9.0	9.8	41.8
Supplementary medical insurance						4.0	4.5	5.0	5.7	6.4	25.5
Income security											
Exclusion of workers' compensation benefits						2.9	3.1	3.2	3.4	3.6	16.1
Exclusion of special benefits for disabled coal miners						0.1	0.1	0.1	0.1	0.1	0.6
Exclusion of cash public assistance benefits						0.4	0.4	0.4	0.4	0.5	2.1
Net exclusion of pension contributions and earnings						54.0	57.0	59.0	61.0	64.0	295.0
Individual retirement plans						6.2	6.5	6.9	7.3	7.8	34.7
Keogh plans						2.9	3.0	3.2	3.4	3.6	16.1

Exclusion of other employee benefits:											
Premiums on group term life insurance						2.2	2.3	2.5	2.6	2.7	12.4
Premiums on accident and disability insurance						0.1	0.1	0.1	0.1	0.1	0.6
Exclusion for employer-provided death benefits						(1)	(1)	(1)	(1)	(1)	0.1
Additional standard deduction for the blind and the elderly						1.7	1.8	1.9	1.9	2.0	9.3
Tax credit for the elderly and disabled						.1	.1	.1	.1	.1	.5
Deductibility of casualty and theft losses						.3	.4	.5	.6	.7	2.5
Earned income credit [5]						.9	.9	1.2	1.4	1.5	5.9
Social security and railroad retirement											
Exclusion of untaxed social security-railroad retirement benefits						25.6	27.0	28.4	29.9	31.4	142.3
Veterans' benefits and services											
Exclusion of veterans' disability compensation						1.4	1.5	1.5	1.6	1.7	7.7
Exclusion of veterans' pensions						0.1	0.1	0.1	0.1	0.1	0.6
Exclusion of GI bill benefits						0.1	0.1	0.1	0.1	0.1	0.4
Exclusion of interest on State and local government veterans' housing bonds	(1)	(1)	(1)	(1)	(1)	0.2	0.2	0.2	0.2	0.2	1.1
General purpose fiscal assistance											
Exclusion of interest on public purpose State and local government debt	1.5	1.4	1.4	1.3	1.3	10.0	10.9	11.8	13.0	13.7	66.3
Deduction of nonbusiness State and local government income and personal property taxes						23.8	25.5	27.4	29.5	31.7	137.9
Tax credit for corporations with possessions source income	2.9	3.0	3.1	3.2	3.3						15.5
Interest											
Deferral of interest on savings bonds						1.0	1.0	1.0	1.0	1.0	5.0

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[1] Positive tax expenditure of less than $50 million.

[2] Negative tax expenditure of less than $50 million.

[3] In addition, the 5.4-cents-per-gallon exemption from excise tax for alcohol fuels results in a reduction in excise tax receipts, net of income tax effect, of $0.4 billion per year for 1992 and 1993, $0.5 billion per year for 1994 and 1995, and $0.6 billion in 1996.

[4] The figures in the table show the effect of the child medical insurance credit on receipts. The increase in outlays is $0.5 billion in 1992, $0.6 billion per year in 1993 and 1994, and $0.7 billion per year in 1995 and 1996.

[5] The figures in the table show the effect of the earned income credit on receipts. The increase in outlays is: $7.8 billion in 1992, $8.5 billion in 1993, $10.6 billion in 1994, $12.3 billion in 1995, and $13.2 billion in 1996.

Source: Joint Committee on Taxation, "Estimates of Federal Tax Expenditures for Fiscal Years 1992–1996" (JCS–4–91), March 11, 1991.

ADDENDUM TO TABLE 1.—SUM OF TAX EXPENDITURE ITEMS BY TYPE OF TAXPAYER, FISCAL YEARS 1992–96

[Billions of dollars]

Fiscal year	Corporations	Individuals	Total
1992	46.9	328.0	374.9
1993	47.2	351.7	398.9
1994	48.2	376.3	424.5
1995	49.3	402.5	451.8
1996	50.6	432.2	482.8

Note.—These totals represent the mathematical sum of the estimated fiscal year effect of each of the tax expenditure items included in table 1. The limitations on the use of the totals is explained in the text.

PART VI. LEGISLATIVE HISTORIES OF FEDERAL TAX LEGISLATION, 1954–90

A. Procedural History

1. PRINCIPAL TAX ACTS 1954–80: PUBLIC LAW NUMBERS [1]

Title	Date	Public Law No.
Internal Revenue Code of 1954	August 16, 1954	Public Law 83–591
Tax Rate Extension Act of 1955	March 30, 1955	Public Law 84–18
Tax Rate Extension Act of 1956	March 29, 1956	Public Law 84–458
Tax Rate Extension Act of 1957	March 29, 1957	Public Law 85–12
Tax Rate Extension Act of 1958	June 30, 1958	Public Law 85–475
Technical Amendments Act of 1958	September 2, 1958	Public Law 85–866
Life Insurance Company Income Tax Act of 1959.	June 25, 1959	Public Law 86–69
Tax Rate Extension Act of 1959	June 30, 1959	Public Law 86–75
Tax Rate Extension Act of 1960	June 30, 1960	Public Law 86–564
Tax Rate Extension Act of 1961	June 30, 1961	Public Law 87–72
Tax Rate Extension Act of 1962	June 28, 1962	Public Law 87–508
The Revenue Act of 1962	October 16, 1962	Public Law 87–834
Tax Rate Extension Act of 1963	June 29, 1963	Public Law 88–52
The Revenue Act of 1964	February 26, 1964	Public Law 88–272
Excise Tax Rate Extension Act of 1964	June 30, 1964	Public Law 88–348
Interest Equalization Tax Act of 1964	September 2, 1964	Public Law 88–563
Interest Equalization Tax Act of 1965	October 9, 1965	Public Law 89–243
Tax Adjustment Act of 1966	March 15, 1966	Public Law 89–368
Federal Tax Lien Act of 1966	November 2, 1966	Public Law 89–719
Foreign Investors Tax Act of 1966	November 13, 1966	Public Law 89–809
Interest Equalization Tax Act of 1967	July 31, 1967	Public Law 90–59
Revenue and Expenditure Control Act of 1968.	June 20, 1968	Public Law 90–364
Interest Equalization Tax Act of 1969	November 26, 1969	Public Law 91–128
Tax Reform Act of 1969	December 30, 1969	Public Law 91–172
Revenue Act of 1971	December 10, 1971	Public Law 92–178
Tax Reduction Act of 1975	March 29, 1975	Public Law 94–12
Tax Reform Act of 1976	October 4, 1976	Public Law 94–455
Tax Reduction and Simplification Act of 1977.	May 23, 1977	Public Law 95–30
Revenue Act of 1978	November 6, 1978	Public Law 95–600
Crude Oil Windfall Profit Tax Act of 1980	April 2, 1980	Public Law 96–223

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[1] Source: "Taxes: Significant Federal Tax Acts, 1954–1990," Congressional Research Service, Louis Alan Talley, April 20, 1990, rev. March 4, 1991.

2. Principal Tax Acts 1981–90: Procedural History

A. Procedural History

THE ECONOMIC RECOVERY ACT OF 1981 (ERTA)

H.R. 4242 **July 23, 1981**

MR. ROSTENKOWSKI

To amend the Internal Revenue Code of 1954 to encourage economic growth through reductions in individual income tax rates, the expensing of depreciable property, incentives for small businesses, and incentives for savings, and for other purposes.

July 23, 1981. Ordered reported.

July 24, 1981. Reported to House. H.Rept. 97-201.

July 28, 1981. Hearing before Rules Committee.

July 28, 1981. H.Res. 198, providing modified open rule, 2 hours debate reported to House. H.Rept. 97-205.

July 29, 1981. H.Res. 198 adopted by House by a record vote of 280 yeas, 150 nays.

July 29, 1981. Passed the House amended by a record vote of 323 yeas, 107 nays. Rejected a motion to recommit the bill to the Committee on Ways and Means. Agreed to an amendment in the nature of a substitute made in order by the rule, the text of H.R. 4260 by a record vote of 238 yeas, 195 nays. Rejected an amendment in the nature of a substitute made in order by the rule, the text of H.R. 4269 by a record vote of 144 yeas, 288 nays.

July 31, 1981. Passed the Senate amended striking all after the enacting clause and inserting in lieu thereof the text of H.J.Res. 266, as amended; by a voice vote.

July 31, 1981. Senate insisted on its amendment and requested a conference with the House. Appointed as conferees: Senators Dole, Packwood, Roth, Danforth, Long, Byrd, and Bentsen.

July 31, 1981. House disagreed to the Senate amendment and agreed to a conference, as well as a motion to instruct the conferees to insist on sec. 311 of the bill as passed by the House relating to the amounts which persons, who are active participants in employer-sponsored pension plans, may deduct for contributions to IRA's. Appointed as conferees: Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Conable, Duncan, and Archer.

Aug. 1, 1981. House conference report filed. H.Rept. 97-215.

Aug. 1, 1981. Senate conference report filed. S.Rept. 97-176.

Aug. 3, 1981. Senate agreed to the conference report by a record vote of 67 yeas, 8 nays.

Aug. 4, 1981. House agreed to the conference report by a record vote of 282 yeas, 95 nays.

Aug. 13, 1981. Approved. Public Law 97-34.

(See P.L. 97-424 (H.R. 6211) for related action.)

(See P.L. 97-448 (H.R. 6056) for related action.)

THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 (TEFRA)

H.R. 4961 **Nov. 13, 1981**

Mr. Stark, Mr. Duncan of Tennessee, Mr. Holland, Mr. Fowler, Mr. Russo, Mr. Matsui, Mr. Heftel of Hawaii, Mr. Guarini, Mr. Schulze, Mr. Vander Jagt, Mr. Ford of Tennessee, Mr. Bailey of Pennsylvania, and Mr. Bafalis

To make miscellaneous changes in the tax laws.

(As introduced, embodies H.R. 2397, 2860, 3262, 4408, and 4908.)

Oct. 19, 1981. Hearing held on subject matter.

Nov. 13, 1981. Referred to Subcommittee on Select Revenue Measures.

Nov. 13, 1981. Subcommittee on Select Revenue Measures reported to full Committee.

Nov. 19, 1981. Ordered reported.

Dec. 14, 1981. Reported to House amended to include provisions of H.R. 4942. H.Rept. 97-404.

Dec. 15, 1981. Passed the House by a voice vote. (Brought up under suspension of the rules.)

July 12, 1982. Reported to Senate with amendments. S. Rept. 97-494, parts 1 & 2.

July 22, 1982. Passed Senate with amendments by a record vote of 50 yeas, 47 nays.

July 28, 1982. Senate insisted on its amendments and requested a conference with the House. Appointed as conferees: Senators Dole, Packwood, Roth, Danforth, Long, Harry F. Byrd, Jr., and Bentsen; on title IV only (excluding sec. 406(e)), Senators Packwood, Kassebaum, and Cannon.

July 28, 1982. House disagreed to the Senate amendments and agreed to a conference with the Senate. Appointed as conferees: Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Conable, Duncan, and Archer for the entire bill and the Senate amendments and modifications committed to conference, with the exception of subtitle B (Medicaid) of title I and title IV (Airport and Airway System Development), except for sec. 406(e) of that title, and with the exception of sec. 395 of the Senate amendments and modifications committed to conference; Representatives Dingell, Waxman, Scheuer, Broyhill, and Madigan solely for the consideration of subtitle B of title I (Medicaid), subtitle C of title I (Utilization and Quality Control Peer Review), such parts of subtitle A (Medicare) of title I that relate to amendments to the Supplementary Medical Insurance Program authorized under title XVIII of the Social Security Act, and sec. 395 of the Senate amendments and modifications committed to conference; Representatives Mineta, Anderson, Levitas, Oberstar, Clausen, Snyder, and Hammerschmidt solely for the consideration of title IV, with the exception of sections 406(e) and 407(b), of the Senate amendments and modifications committed to conference; and Representatives Fuqua, Glickman, and Winn solely for the consideration of sec. 407(b) of title IV of the Senate amendments and modifications committed to conference.

Agreed to a motion to instruct House conferees to insist that the conference report result in attainment of expenditure reduction levels no lower than those required by the conference report on the First Concurrent Resolution on the Budget for fiscal year 1983, and revenue raising levels equal to those required for fiscal year 1983 by the conference report on the First Concurrent Resolution on the Budget for fiscal year 1983 by a record vote of 299 yeas, 89 nays.

Agreed to a motion to table H.Res. 541, to return to the Senate H.R. 4961 with the Senate amendments thereto, with the message that the Senate amendments are an infringement of the privileges of the House by a record vote of 229 yeas, 169 nays.

Aug. 4, 1982. Change of conferees solely for consideration of sec. 395 of the Senate amendment to H.R. 4961 and modifications thereof committed to conference, Representatives Dingell, Wirth, and Broyhill.

Aug. 17, 1982. Conference report filed. H.Rept. 97-760.

Aug. 18, 1982. Hearing before Rules Committee. H.Res. 569 waiving all points of order and providing for 4 hours of debate, 3 hours for the Ways and Means Committee and 30 minutes each for Energy and Commerce, and Public Works and Transportation Committees; provides conference report be considered read; one motion to recommit, which may not contain instructions, was reported to the House. H.Rept. 97-763.

Aug. 18, 1982. Conference report filed in the Senate. S. Rept. 97-530.

Aug. 19, 1982. H.Res. 569 passed the House by a record vote of 253 yeas, 176 nays; House agreed to a motion to table H.Res. 571, to return to the Senate H.R. 4961 and Senate amendments thereto with a message that the Senate amendments and conference action contravene with the Constitution, and are an infringement of the privileges of the House, by a record vote of 268 yeas, 144 nays. The conference report passed the House by a record vote of 226 yeas, 207 nays.

Aug. 19, 1982. Senate sustained the chair in rejecting a point of order that the conference report contained matters not germane and thus not in order by a record vote of 52 yeas, 47 nays. The conference report passed the Senate by a record vote of 52 yeas, 47 nays.

Sept. 3, 1982. Approved. Public Law 97-248.

THE SOCIAL SECURITY AMENDMENTS OF 1983

H.R. 1900 **Mar. 3, 1983**

MR. ROSTENKOWSKI, MR. PICKLE, AND MR. CONABLE

To assure the solvency of the Social Security Trust Funds, to reform the medicare reimbursement of hospitals, to extend the Federal supplemental compensation program, and for other purposes.

Feb. 1, 2, 3, 4, 7, 8, 9, 14, and 15, 1983. Hearings held on subject matter.

Feb. 25, 1983. Reported to the full Committee by the Subcommittees on Health, Social Security, and Public Assistance and Unemployment Compensation.

Mar. 3, 1983. Ordered reported.

Mar. 4, 1983. Reported to House. H.Rept. 98-25 Part 1.

Mar. 4, 1983. Referred to Appropriations Committee for 15 legislative days.

Mar. 8, 1983. Hearing before Rules Committee.

Mar. 8, 1983. H.Res. 126, providing for a modified closed rule with 4 hours of debate was reported to the House. H.Rept. 98-26. Under H.Res. 126, 2 amendments were in order: (1) an amendment to strike the provisions reducing initial benefit levels beginning in the year 2000 and raising payroll taxes beginning in the year 2015 and to substitute instead provisions which gradually raise the retirement age with full benefits from 65 to 67 through phase-in programs beginning in the year 2000, and to maintain age 62 benefits at an ultimate rate of 70 percent of full benefits; (2) an amendment to strike the provision reducing initial benefit levels beginning in the year 2000 and to raise payroll taxes beginning in the year 2015 and to substitute instead a 0.53 percentage point increase in the employer and employee payroll tax rate beginning in the year 2010. Additionally under H.Res. 126, the Appropriations Committee was discharged from further consideration of the bill.

Mar. 9, 1983. H.Res. 126 passed the House by a voice vote. Amendment number 1 above passed the House by a record vote of 230 yeas to 200 nays. Earlier, the amendment was agreed to in the Committee of the Whole by a record vote of 228 yeas to 202 nays. Amendment 2 above was rejected by the House by a record vote of 132 yeas to 296 nays.

Mar. 9, 1983. Passed the House, as amended, by a record vote of 282 yeas to 148 nays.

Mar. 23, 1983. Passed the Senate, as amended, by a record vote of 88 yeas to 9 nays.

Mar. 23, 1983. Senate requested a conference with the House and appointed conferees: Senators Dole, Danforth, Chafee, Heinz, Long, Bentsen, Moynihan.

Mar. 23, 1983. House agreed to a conference and appointed conferees: Congressmen Rostenkowski, Pickle, Jacobs, Ford, Shannon, Conable, Duncan, and Archer.

Mar. 24, 1983. Conference Report filed. H. Rept. 98-47.

Mar. 24, 1983. Conference Report agreed to in the House by record vote of 243 to 102 and Senate agreed to Conference Report by record vote of 58 to 14.

Apr. 20, 1983. Approved. Public Law 98-21.

THE DEFICIT REDUCTION ACT OF 1984 (DEFRA)

H.R. 4170 **Oct. 20, 1983**

MR. ROSTENKOWSKI, MR. CONABLE, MR. GIBBONS, MR. PICKLE, MR. RANGEL, MR. STARK, MR. GEPHARDT, MR. DOWNEY, MR. HEFTEL OF HAWAII, MR. FOWLER, MR. GUARINI, MR. SHANNON, MR. PEASE, MR. MATSUI, MR. FLIPPO, MR. DORGAN OF NORTH DAKOTA, MRS. KENNELLY, MR. VANDER JAGT, MR. FRENZEL, MR. MARTIN OF NORTH CAROLINA, MR. SCHULZE, MR. GRADISON, MR. MOORE, MR. JONES OF OKLAHOMA, MR. FORD OF TENNESSEE, MR. JENKINS, AND MR. THOMAS OF CALIFORNIA

To provide for tax reform, and for other purposes.

Oct. 20, 1983. Ordered reported.

Oct. 21, 1983. Reported to the House with amendments. H.Rept. 98-432.

Nov. 16, 1983. Hearing before the Rules Committee.

Nov. 16, 1983. H.Res. 376, providing for modified open rule with 2 hours debate on H.R. 4170, Tax Reform Act of 1983. The bill shall be considered as having been read for amendment under the 5-minute rule. Waives all points of order against consideration of the bill for failure to comply with the provisions of clause 5, Rule XXI (appropriations in a legislative bill). Makes in order an amendment printed in the Record of Nov. 16, 1983, by Representative Waxman, striking title X and inserting a new text in lieu thereof. Said amendment shall be considered to be part of the original bill. No amendment to the bill, as modified by Representative Waxman, shall be in order except the following amendments, which shall be considered only in the following order and which shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole. Waives all points of order against consideration of said amendments and said amendments shall be considered as having been read: (1) the amendments recommended by the Committee on Ways and Means to title IX now printed in the bill, and said amendment shall be considered en bloc and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole; (2) the first amendment printed in the Record of Nov. 16, 1983, by, and if offered by, Representative Rostenkowski of Illinois or his designee, beginning on page 5, line 14 of the bill; (3) the second amendment printed in the Record of Nov. 16, 1983, by, and if offered by, Representative Rostenkowski or his designee, amending titles VIII and V of the bill; (4) the third amendment printed in the Record of Nov. 16, 1983, by, and if offered by, Representative Rostenkowski or his designee, amending title VII of the bill, and said amendment shall be debatable for 30 minutes, equally divided and controlled by Representative Rostenkowski and a Member opposed thereto; (5) the amendment printed in the Record of Nov. 16, 1983 by and if offered by, Representative Waxman of California, inserting new secs. in title X of the bill, and said amendment shall be debatable for 1 hour, equally divided and controlled by Representative Waxman and a Member opposed thereto; (6) the fourth amendment printed in the Record of Nov. 16, 1983 by, and if offered by, Representative Rostenkowski of Illinois or his designee, consisting of the text of the amendment recommended by the Committee on Ways and Means in, and inserting a new sec. in, title X of the bill, and said amendment shall be debatable for 2 hours, equally divided and controlled by Representative Rostenkowski or his designee and a Member opposed thereto;

(7) the fifth amendment printed in the Record of Nov. 16, 1983 by, and if offered by, Representative Rostenkowski or his designee, inserting a new title, and said amendment shall be debatable for 1 hour, equally divided and controlled by Representative Rostenkowski or his designee and a Member opposed thereto; (8) the amendment printed in the Record of Nov. 16, 1983 by, and if offered by, Representative Pease of Ohio, and said amendment shall be debatable for 2 hours, equally divided and controlled by Representative Pease and a Member opposed thereto; (9) the amendment printed in the Record of Nov. 16, 1983 by, and if offered by, Representative Morrison of Connecticut and said amendment shall be debatable for 30 minutes, equally divided and controlled by Representative Morrison and a Member opposed thereto; and (10) any other amendments recommended by the Committee on Ways and Means. Finally, the rule provides one motion to recommit. Reported to the House. H.Rept. 98-555

Nov. 17, 1983. H.Res. 376, failed of passage by a record vote of 204 yeas to 214 nays.

Mar. 5, 1984. Supplemental report with amendment reported to the House. H.Rept. 98-432 Pt. II

Mar. 7, 1984. Hearing before Rules Committee.

Mar. 14, 1984. H.Res. 462, providing for a modified closed rule, with 4 hours of debate was reported to the House. H.Rept. 98-617. Under H.Res. 462, in lieu of the amendments recommended by the Committee on Ways and Means now printed in the bill, it shall be in order to consider a committee amendment in the nature of a substitute consisting of the text of titles I through VII and title XII (redesignated as title IX) of the committee substitute reported on Mar. 5, 1984. Allows only conforming and perfecting amendments formally recommended by the Committee on Ways and Means which are not subject to amendment. Such amendments shall be entertained only at the discretion of the Chairman of the Committee on the Whole. Provides one motion to recommit with or without instructions.

Apr. 11, 1984. Passed the House by a record vote of 318 yeas to 97 nays.

May 17, 1984. Passed the Senate with amendment by a record vote of 74 yeas to 23 nays, providing for certain spending reductions and revenue increases, and reducing deficits by including reconciliations and appropriations caps for defense and non-defense discretionary spending for fiscal years 1985, 1986, and 1987, after striking all after the enacting clause and inserting in lieu thereof the text of H.R. 2163, as amended, with additional amendments.

May 17, 1984. Senate insisted on its amendment, requested a conference with the House thereon, and appointed as conferees from the Committee on Appropriations, Senators Hatfield, Stevens, Weicker, Stennis, and Byrd; from the Committee on Finance, Senators Dole, Packwood, Roth, Danforth, Chafee, Long, Bentsen, Matsunaga, and Baucus; and from the Committee on the Budget, Senators Domenici, Armstrong, Kassebaum, Boschwitz, Tower, Chiles, Hollings, Biden, and Johnston

May 18, 1984. Senator Sasser was substituted in lieu of Senator Biden.

May 23, 1984. House agreed with an amendment, to the Senate amendments. House insisted on its amendment to the Senate amendments and agreed to a conference and appointed as conferees: From the Committee on Ways and Means, solely for consideration of title XI of the Senate amendments, and Division A of the House amendment to the Senate amendments: Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Conable, Duncan, and Archer. From the Committee on Ways and Means solely for consideration of title IX (except for secs.

921-926, 943, 944, 952, and 958) and sec. 1611 of the Senate amendments, and part A of title III and title VI of Division B of the House amendment to the Senate amendments: Representatives Rostenkowski, Jacobs, Rangel, Russo, Ford of Tennessee, Stark, Pease, Conable, Duncan, Moore, and Campbell. From the Committee on the Budget, solely for consideration of title IX sec. 1001, and titles XII-XVI of the Senate amendments, and Division B of the House amendment to the Senate amendments: Representatives Jones of Oklahoma, Panetta, Gephardt, Nelson of Florida, Donnelly, Derrick, Williams of Montana, Latta, Shuster, Frenzel, and Loeffler. From the Committee on Appropriations, solely for consideration of title XIV and sec. 1606 of the Senate amendments: Representatives Whitten, Boland, Natcher, Smith of Iowa, Conte, and McDade. From the Committee on Armed Services, solely for consideration of such portions of sec. 1201 of the Senate amendments, and such portions of sec. 201 of Division B of the House amendment to the Senate amendments, as relate to cost-of-living adjustments for military retirees, and title XV of the Senate amendments: Representatives Price, Nichols, Aspin, Dickinson, and Hillis. From the Committee on Banking, Finance and Urban Affairs, solely for consideration of secs. 1301-1314 of the Senate amendments: Representatives St Germain, Annunzio, Hubbard, Barnard, Oakar, Wylie, and McKinney. From the Committee on Energy and Commerce, solely for consideration of title IX (except for secs. 905, 909, 917, 919, 951, 955-957, subsecs. (a), (b), and (c) of secs. 965, 966, 971-976, 981-985, and 992-997) and sec. 1611 of the Senate amendments, and title III (except for secs. 308, 339, 340, and 342) and secs. 650 and 661 of Division B of the House amendment to the Senate amendments: Representatives Dingell, Waxman, Scheuer, Luken, Walgren, Mikulski, Broyhill, Madigan, and Dannemeyer. From the Committee on Government Operations, solely for consideration of title XV and secs. 1603, 1605, 1609, and 1610 (b) of the Senate amendments: Representatives Brooks, Fuqua, Collins, English, Levitas, Horton, Erlenborn, and Clinger. From the Committee on the Judiciary, solely for consideration of sec. 1604 of the Senate amendments: Representatives Rodino, Brooks, and Fish. From the Committee on Post Office and Civil Service, solely for consideration of title XII and secs. 1604 and 1607 of the Senate amendments, and title II of Division B of the House amendment to the Senate amendments: Representatives Ford of Michigan, Clay, Schroeder, Garcia, Leland, Albosta, Oakar, Taylor, Gilman, Corcoran, and Courter. From the Committee on Rules, solely for consideration of title XIV (except for subsec. 1401(f) of the Senate amendments: Representatives Pepper, Long of Louisiana, Beilsenson, Frost, Quillen, and Lott. From the Committee on Small Business, solely for consideration of title IV of Division B of the House amendment to the Senate amendment: Representatives Mitchell, Smith of Iowa, Addabbo, McDade, and Conte. From the Committee on Veterans' Affairs, solely for consideration of title V of Division B of the House amendment to the Senate amendments: Representatives Montgomery, Edwards of California, Edgar, Applegate, Leath of Texas, Shelby, Hammerschmidt, Wylie, and Hillis. Agreed to order the previous question on the motion by 296 yeas to 128 nays. House agreed to a motion to instruct House conferees not to agree in the Senate amendments extending the accelerated cost recovery period for real estate and reducing the amount of the rehabilitation tax credit by 397 yeas, 24 nays.

May 24, 1984. Senate disagreed to the amendment of the House to the Senate amendment to H.R. 4170 providing for certain spending reductions and revenue increases, and reducing deficits by including reconciliations and appropriations caps for defense and non-defense discretionary spending for fiscal years 1985, 1986, and 1987, agreed to the conference requested by the House thereon, and appointed as conferees, from the Committee on Appropriations, to consider those matters dealing with appropriations, Senators Hatfield, Stevens, Weicker, Stennis, and Byrd; from the Committee on Finance, to consider those matters within that committee's jurisdiction, Senators Dole, Packwood, Roth, Danforth, Chafee, Long, Bentsen, Matsunaga, and Baucus; from the Committee on the Budget, to be general conferees, Senators Domenici, Armstrong, Kassebaum, Boschwitz, Tower, Chiles, Hollings, Johnston, and Sasser; from the Committee on Banking, Housing, and Urban Affairs, to consider those matters within that committee's jurisdiction, Senators Garn, Tower, and Proxmire; and from the Committee on Governmental Affairs, to consider those matters within that committee's jurisdiction and in addition, from the Committee on Armed Services, to consider only those secs. dealing with competition in contracting, Senators Roth, Stevens, Mathias, Cohen, Quayle, Eagleton, Bingaman, and Levin.

May 24, 1984. House disagreed to the Senate amendment to the title to H.R. 4170, to provide for tax reform; and insisted on its disagreement to said amendment.

June 8, 1984. Senators Thurmond, Simpson, and Cranston were added as conferees, solely for the consideration of Title V of Division B of the House amendment to the Senate amendments.

June 12, 1984. Senators Gorton, Weicker and Bumpers were added as conferees, solely for the consideration of Title IV of Division B of the House amendment to the Senate amendments.

June 14, 1984. Conferees were changed with respect to the jurisdiction of the Governmental Affairs Committee, as follows: For subconference 6, concerning Civil Service issues, Senators Eagleton, Chiles, and Bingaman were designated as minority conferees; and for subconferences 7 and 11, concerning Titles XV and XVI, Senators Eagleton, Chiles, and Levin were designated as minority conferees.

June 25, 1984. Conference Report filed. H.Rept. 98-861.

June 27, 1984. Conference Report agreed to in the House by a record vote of 268 yeas to 155 nays and Senate agreed to Conference Report by record vote of 83 yeas to 15 nays.

June 27, 1984. H.Con.Res. 328, unanimous consent request to make technical corrections to H.R. 4170, was agreed to by a voice vote.

June 29, 1984. H.Con.Res. 328 was agreed to in the Senate by a voice vote with an amendment.

June 29, 1984. House agreed to the Senate amendment by unanimous consent.

July 18, 1984. Approved. Public Law 98-369

THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (COBRA)

H.R. 3128 **July 31, 1985**

MR. ROSTENKOWSKI

To make changes in spending and revenue provisions for purposes of deficit reductions and program improvement, consistent with the budget process.

(Also referred to the Committee on Energy and Commerce, for a period ending not later than September 11, 1985, for consideration of parts B and C of title I; September 11, 1985, to the Education and Labor Committee for consideration of section 505 of the bill, and the the Judiciary Committee for consideration of section 124.)

July 31, 1985. Ordered reported.

July 31, 1985. Reported to House. H.Rept. 99-241 part 1.

Aug. 11, 1985. Energy and Commerce Committee reported to House. H. Rept. 99-241 part 2.

Aug. 11, 1985. Energy and Commerce Committee discharged from further action.

Aug. 11, 1985. Judiciary Committee reported to House. H.Rept. 99-241 part 3.

Sept. 17, 1985. Hearing before Rules Committee.

Oct. 29, 1985. H. Res. 301, providing for a modified closed rule, with 2 hours general debate, reported to House. H.Rept. 99-338.

Oct. 31, 1985. H. Res. 301 passed the House by a record vote of 219 yeas, 205 nays.

Oct. 31, 1985. Passed the House by a vote of 245 yeas, 174 nays. Rejected Gradison motion to recommit the bill to the Ways and Means Committee with instructions to report it back forthwith with an amendment that sought to strike out all new spending proposals, by a record vote of 183 yeas, 238 nays.

Nov. 14, 1985. Reported to Senate with an amendment in the nature of a substitute. (No written report.)

Nov. 14, 1985. Passed the Senate with an amendment in the nature of a substitute by a vote of 93 yeas, 6 nays.

Dec. 3, 1985. Hearing before Rules Committee. H.Res. 330 providing for amending the Senate amendment to, and requesting a conference was reported. H.Rept. 99-410.

Dec. 5, 1985. House agreed to H.Res. 330 by a voice vote, and requested a conference with the Senate. Appointed as Conferees from the Ways and Means Committee, Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Jones of Oklahoma, Ford of Tennessee, Jenkins, Gephardt, Downey of New York, Duncan Crane, Gradison, Campbell, Thomas of California, and McGrath.

Dec. 6, 1985. Senate disagreed to House amendment to Senate amendment and agreed to a conference.

Dec. 9, 1985. Senate appointed as Conferees, Senators Packwood, Roth, Danforth, Chafee, Heinz, Durenberger, Wallop, Long, Bentsen, Matsunaga, Mitchell, Moynihan, Baucus, and Pryor.

Dec. 16, 1985. Hearing before the Rules Committee to provide for consideration of the conference report was reported to the House. H.Rept. 99-444.

Dec. 19, 1985. H.Res. 342 was agreed to by a record vote of 239 yeas, 136 nays.

Dec. 19, 1985. Senate agreed to conference report by a record vote of 78 yeas, 1 nay.

Dec. 19, 1985. Hearing before Rules Committee. H. Res. 349 providing for rejecting the conference report and recede from its amendment to the Senate amendment and concur in the Senate amendment with an amendment was reported to the House. H.Rept. 99–454.

Dec. 19, 1985. H. Res. 349 was agreed to by a record vote of 205 yeas, 151 nays.

Dec. 19, 1985. House rejected the conference report and receded from its amendment and concurred in the Senate amendment to the text, with an amendment.

Dec. 19, 1985. Senate agreed to the House amendment with an amendment in the nature of a substitute by a voice vote.

Dec. 20, 1985. House disagreed to the Senate amendment.

Dec. 20, 1985. Senate insisted on its amendment to the amendment of the House to the Senate amendment. Requested a further conference with the House. Appointed as Conferees: Senators Packwood, Roth, Danforth, Chafee, Heinz, Durenberger, Wallop, Long, Bentsen, Matsunaga, Mitchell, Moynihan, Baucus, and Pryor.

Mar. 4, 1986. Hearing before House Rules Committee.

Mar. 5, 1986. H.Res. 390, providing that the House is considered to have receded from its disagreement to the Senate amendment and to have concurred in the Senate amendment to the House amendment to the Senate amendment with an amendment. Reported to House. H. Rept. 99–482.

Mar. 6, 1986. H. Res. 390 agreed to by a record vote of 314 yeas, 86 nays.

Mar. 14, 1986. Senate agreed to the House amendment to the Senate amendment to the House amendment to the Senate amendment with amendments.

Mar. 18, 1986. House disagreed to the Senate amendment to the House amendment to the Senate amendment to the House amendment to the Senate amendment by a record vote of 331 yeas, 76 nays.

Mar. 18, 1986. House earlier agreed to table a motion to disagree to the foregoing Senate amendment and requested a further conference with the Senate by a record vote of 223 yeas, 186 nays. House agreed to table a motion to concur in the foregoing Senate amendment by a record vote of 217 yeas, 192 nays.

Mar. 18, 1986. Senate insisted on its amendment to the amendment to the House to the Senate amendment to the amendment of the House to the Senate amendment.

Mar. 20, 1986. House receded from its disagreement and agreed to the Senate amendment to the House amendment to the Senate amendment to the House amendment to the Senate amendment by a record vote of 230 yeas, 154 nays.

Apr. 7, 1986. Approved. Public Law 99–272.

THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (OBRA 86)

H.R. 5300 **July 31, 1986**

MR. GRAY OF PENNSYLVANIA

To provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

(Referred to the Budget Committee.)

July 31, 1986. Budget Committee reported to House. H. Rept. 99-727.

Aug. 5, 1986. Hearing before the Rules Committee.

Sept. 22, 1986. Budget Committee approved further reconciliation recommendations.

Sept. 23, 1986. H. Res. 558, providing for a modified closed rule, with 3 hours debate, and substituting title X and a technical amendment reported to House. H. Rept. 99-871.

Sept. 24, 1986. H. Res. 558 passed House by a record vote of 255 yeas, 157 nays.

Sept. 24, 1986. Passed the House by a record vote of 309 yeas, 106 nays.

Sept. 25, 1986. Passed the Senate with an amendment in the nature of a substitute (S. 2706). Senate insisted on its amendments and requested a conference with the House. Appointed as conferees from the Committee on Finance: Senators Packwood, Dole, Danforth, Chafee, Long, Bentsen, and Matsunaga for the general conference; and Senators Heinz, Durenberger, Moynihan, and Baucus for Medicare, Medicaid and Maternal and Child Health, Subconferences 19, 20, and 21.

Sept. 25, 1986. House disagreed to Senate amendments and agreed to a conference. Appointed as conferees from the Committee on Ways and Means, solely for consideration of title X, subtitle F of title IV, part 5 of subtitle E of title VI, and parts 5 of subtitle D of title VIII of the House bill and title VI, except for subtitle B thereof, title VI-A, except for section 665, thereof, title X, sections 1105, 1107, and 1201, subtitle B of title XII, and title XIII of the Senate amendment: Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Jacobs, Ford of Tennessee, Duncan, Archer, Crane, and Gradison.

Oct. 17, 1986. Conference Report filed. H. Rept. 99-1012.

Oct. 17, 1986. Conference Report agreed to in the House by a record vote of 305 yeas, 70 nays.

Oct. 17, 1986. Conference Report agreed to in the Senate by a record vote of 61 yeas, 25 nays.

Oct. 17, 1986. H. Con.Res. 416, technical corrections was agreed to by a voice vote.

Oct. 18, 1986. S. Con. Res. 174, technical corrections, passed the Senate by voice vote.

Oct. 18, 1986. House agreed to S. Con. Res. 174 without objection.

Oct. 21, 1986. Approved. Public Law 99-509.

THE TAX REFORM ACT OF 1986 (TRA)

H.R. 3838 **Dec. 3, 1985**

MR. ROSTENKOWSKI, MR. PICKLE, MR. RANGEL, MR. STARK, MR. JENKINS, MR. GEPHARDT, MR. DOWNEY OF NEW YORK, MR. HEFTEL OF HAWAII, MR. FOWLER, MR. GUARINI, MR. RUSSO, MR. PEASE, MR. MATSUI, MR. ANTHONY, MR. FLIPPO, MR. DORGAN OF NORTH DAKOTA, MRS. KENNELLY, MR. DONNELLY, MR. COYNE, MR. GRADISON, AND MR. MCGRATH

To reform the internal revenue laws of the United States.

May 30; June 4, 5, 7, 11, 12, 13, 14, 17, 18, 20, 24, 25, 26, 27; July 8, 9, 10, 11, 12, 17, 19, 22, 25, 26, 29, 30, and 31, 1985. Hearings held on subject matter.

Dec. 3, 1985. Ordered reported.

Dec. 7, 1985. Reported to House. H.Rept. 99-426.

Dec. 10, 1985. Hearing before Rules Committee.

Dec. 10, 1985. H.Res. 336, providing for a modified closed rule with 3 hours of general debate. Makes in order only the following amendments: (1) an amendment offered by Mr. Udall; (2) an amendment offered by Mr. McHugh; (3) an amendment in the nature of a substitute offered by Mr. Duncan. Makes in order amendments recommended by the Committee on Ways and Means to the bill. Provides one motion to recommit. Ordered reported to the House, H. Rept. 99-430.

Dec. 11, 1985. H. Res. 336 failed to pass by a record vote of 202 yeas, 223 nays.

Dec. 16, 1985. Hearing before Rules Committee.

Dec. 16, 1985. H.Res. 343 reported to House providing for a modified closed rule. H. Rept. 99-445.

Dec. 17, 1985. H.Res. 343 passed the House by a record vote of 258 yeas, 168 nays.

Dec. 17, 1985. Passed House, as amended, by voice vote.

May 6, 1986. Ordered reported to Senate.

May 29, 1986. Reported to the Senate. S. Rept. 99-313.

June 24, 1986. Passed the Senate with amendments by a record vote of 97 yeas, 3 nays.

July 15, 1986. Conference requested by Senate. Appointed as conferees: Senators Packwood, Dole, Roth, Danforth, Chafee, Wallop, Long, Bentsen, Matsunaga, Bradley, and Moynihan.

July 16, 1986. House disagreed to Senate amendments and agreed to a conference. Appointed as conferees: Representatives Rostenkowski, Pickle, Rangel, Stark, Gephardt, Russo, Pease, Duncan, Archer, Vander Jagt, and Crane.

July 16, 1986. House agreed to a motion to instruct conferees to insist that the Conference result in fair tax for all taxpayers by record vote of 338 yeas, 61 nays.

Sept. 11, 1986. Objection was heard to a unanimous consent request that conferees have until midnight Sept. 16, 1986, to file the conference report.

Sept. 18, 1986. Conference report filed. H. Rept. 99-841.

Sept. 25, 1986. Conference report agreed to in the House by a recorded vote of 292 yeas, 136 nays.

Sept. 25, 1986. Rejected a motion to recommit by a vote of 160 yeas, 268 nays, and agreed to H. Con. Res. 395, Technical Corrections by unanimous consent.

Sept. 27, 1986. Conference report agreed to in the Senate by a record vote of 74 yeas, 23 nays.

Oct. 22, 1986. Approved. Public Law 99-514.

THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987 (OBRA 87)

H.R. 3545 **Oct. 26, 1987**

MR. GRAY OF PENNSYLVANIA

To provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1988.

(Referred to Budget Committee.)

Oct. 15, 1987. Ways and Means Committee approved its recommendations.

Oct. 26, 1987. Budget Committee reported to the House. H. Rept. 100-391, parts 1 and 2. (Titles IX and X are Ways and Means Committee's jurisdiction.)

Oct. 28, 1987. Hearing before Rules Committee. H. Res. 296 providing for a modified closed rule with 3 hours of debate was reported to the House. H. Rept. 100-408.

Oct. 29, 1987. H. Res. 296 failed of passage by a record vote of 203 yeas, 217 nays.

Oct. 29, 1987. Hearing before Rules Committee. H. Res. 298 providing for a modified closed rule with 1 hour of debate was reported to the House. H. Rept. 100-411.

Oct. 29, 1987. (Second legislative day.) H. Res. 298 passed the House by a record vote of 238 yeas, 182 nays.

Oct. 29, 1987. (Second legislative day.) Passed the House amended, by a record vote of 206 yeas, 205 nays.

Dec. 10, 1987. Passed Senate with an amendment in the nature of a substitute (S. 1920), with floor amendments, by a record vote of 81 yeas, 13 nays. Senate insisted on its amendments and requested a conference with the House. Appointed as conferees from the Finance Committee: Senators Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley, Mitchell, Packwood, Dole, Roth, Danforth, Chafee, and Heinz.

Dec. 11, 1987. House disagreed to Senate amendments and agreed to a conference. Appointed as conferees from the Ways and Means Committee for consideration of title III, subtitle A of title IV, and title IX of the House bill, and subtitle A of title IV (except subpart V of part A and subpart II of part B) and subtitle A of title VI and sec. 8309 of the Senate amendment, and modifications committed to conference: Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Jacobs, Downey of New York, Duncan, Archer, Vander Jagt, and Crane. For consideration of title X of the Senate amendment, and modifications committed to conference: Representatives Rostenkowski, Downey of New York, and Duncan. As additional conferees for consideration of the House bill (except title X), and the Senate amendment (except subtitle B of title IV), and modifications committed to conference: Representatives Foley and Cheney.

Dec. 21, 1987. Conference report filed. H.Rept. 100-495.

Dec. 21, 1987. Conference report agreed to in House by a record vote of 237 yeas, 181 nays.

Dec. 22, 1987. Conference report agreed to in Senate by a record vote of 61 yeas, 28 nays.

Dec. 22, 1987. Approved. Public Law 100-203.

THE TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988 (TAMRA)

H.R. 4333 **Mar. 31, 1988**

MR. ROSTENKOWSKI AND MR. DUNCAN

To make technical corrections relating to the Tax Reform Act of 1986, and for other purposes.

July 14, 1988. Ordered reported with amendments.

July 26, 1988. Reported to House. H. Rept. 100-795.

Aug. 2, 1988. Hearing before Rules Committee.

Aug. 2, 1988. H. Res. 507, providing for a closed rule with one hour of debate, makes in order a committee amendment in the nature of a substitute, as modified by the amendment in the report, and provides one motion to recommit with or without instructions, was reported to the House. H. Rept. 100-812.

Aug. 4, 1988. H. Res. 507 passed the House by a vote of 288 yeas, 123 nays.

Aug. 4, 1988. Passed House by a vote of 380 yeas, 25 nays, and agreed to the Committee amendment in the nature of a substitute.

Oct. 11, 1988. Passed Senate with an amendment in the nature of a substitute (S. 2238) by a vote of 87 yeas, 1 nay.

Oct. 11, 1988. Senate insisted on its amendment and requested a conference. Appointed as conferees: Senators Bentsen, Matsunaga, Moynihan, Baucus, Boren, Packwood, Dole, Roth and Danforth.

Oct. 12, 1988. House disagreed to the Senate amendment and agreed to a conference. Appointed as conferees: Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Archer, Vander Jagt, and Crane.

Oct. 21, 1988. Conference report filed in House. H.Rept. 100-1104.

Oct. 21, 1988. Conference report agreed to in House under suspension of the rule by a record vote of 358 yeas, 1 nay.

Oct. 22, 1988. Conference report agreed to in Senate by voice vote.

Nov. 10, 1988. Approved. Public Law 100-647.

THE OMNIBUS BUDGET RECONCILIATION ACT OF 1989 (OBRA 89)

H.R. 3299 **Sept. 20, 1989**

MR. PANETTA

To provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990.

Sept. 20, 1989. Reported to the House. H. Rept. 101-247.

Sept. 21, 1989. H.Res. 245, providing six hours of general debate, reported to the House. H.Rept. 101-248.

Sept. 26, 1989. H. Res. 245 passed the House by a record vote of 316 yeas, 109 nays.

Sept. 26, 1989. H. Res. 249, providing for further consideration of the bill reported to the House. H. Rept. 101-261.

Sept. 27, 1989. H. Res. 249 passed the House by a vote of 371 yeas, 49 nays.

Sept. 27, 1989. House agreed to the Roukema amendment that deletes provisions that require trustee boards that administer single-employer pension plans to consist of equal representation of employees and employers. Agreed to Dorgan amendment that deletes the provision which denies favorable tax treatment to certain employee health benefit plans that discriminate in favor of owners and executives. Agreed to the Anderson amendment that requires a portion of the aviation user taxes collected each year to be placed in the Treasury, instead of the Airport and Airway Trust Fund as required by current law.

Sept. 28, 1989. House continued consideration of amendments. Rejected the Rostenkowski amendment that sought to eliminate the capital gains tax cuts, expand the availability of Individual Retirements Accounts, allow funds to be withdrawn from IRAs without penalty if used to help buy a first home or to pay college costs, extend the current 33 percent tax rate to apply to incomes above the level at which the rate drops from 33 percent to 28 percent under current law. Rejected by a record vote of 190 yeas, 239 nays.

Oct. 3, 1989. House continued consideration of amendments. Rejected the Oxley amendment that sought to delete the provisions that enact the "fairness doctrine" into law and that permit the FCC to fine broadcasters for violation of the doctrine.

Oct. 4, 1989. House continued consideration of amendments. Agreed to the Donnelly amendment that completely repeals the provisions of the Medicare Catastrophic Act except for the following medicaid provisions: returns the medicare hospital, skilled nursing facility, and physician benefits to the levels available prior to enactment of the act; eliminates new medicare coverage for high outpatient prescription drug costs, respite care, and mammograms; and return of medicare home health and hospice benefits to levels available prior to enactment of the act by a vote of 360 yeas, 66 nays. Agreed to the Panetta amendment to the Donnelly amendment that strikes provisions specifying that the deficit increases resulting from repeal or modification of the act shall not be counted for purposes of determining compliance with the Gramm-Rudman deficit ceilings. Rejected the Stark amendment that sought to repeal the act's income-based supplemental premium; repeal the catastrophic hospital, skilled nursing facility and physician benefits; retain the increase in the medicare flat-rate premium; return the new prescription drug, respite care, and mammogram benefits; and retain certain medicaid provisions also retained in the Donnelly substitute amendment by a vote of 156 yeas, 269 nays.

Oct. 5, 1989. Passed the House by a vote of 333 yeas, 91 nays.

Oct. 13, 1989. Passed the Senate amended (text of S. 1750) by a vote of 87 yeas, 7 nays.

Oct. 18, 1989. House disagreed to the Senate amendment and asked for a conference. Appointed as conferees from the Committee on Ways and Means, for consideration of subtitle B of title III and title XI (except sections 11901 through 11903) of the House bill, and title VI and sections 302, 4004 through 4013, and 8001 of the Senate amendment, Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Ford of Tennessee, Downey, Archer, Vander Jagt, Crane, and Schulze. For consideration of subtitle A of title IV, section 4101 (insofar as it relates to section 1142 of the Social Security Act), 4111, and 4121 (insofar as it relates to section 1142 of the Social Secuirty Act), and title X (except sections 10181 through 10191) of the House bill, and title V (except section 5501) of the Senate amendment, Representatives Rostenkowski, Gibbons, Pickle, Rangel, Stark, Jacobs, Downey, Crane, Brown of Colorado, Chandler, and Shaw. For consideration of sections 10181 through 10191 of the House bill, Representatives Rostenkowski, Stark, Donnelly, Coyne, Pickle, Anthony, Levin of Michigan, Archer, Vander Jagt, Crane, and Schulze. For consideration of sections 11901 through 11903 of the House bill, Representatives Rostenkowski, Downey, Ford of Tennessee, Pease, Matsui, Kennelly, Andrews, Schulze, Shaw, Sundquist, and Johnson of Connecticut. For consideration of section 304 of the Senate amendment, Representatives Rostenkowski, Downey, and McGrath.

Oct. 19, 1989. Senate insisted on its amendments and agreed to a conference. Appointed as conferees from the Committee on Finance: Senators Bentsen, Matsunaga, Moynihan, Baucus, Mitchell, Riegle, Rockefeller, Packwood, Dole, Roth, Danforth, Chafee, and Heinz.

Oct. 25, 1989. The first panel from the Committee on Ways and Means (revenues-pensions-fees) is appointed also for consideration of the third item listed under miscellaneous charges in the fee schedules set forth in section 301(a)(1) of the Senate amendment.

Nov. 16, 1989. Hearing before Rules Committee. H. Res. 291, waiving all points of order against the conference report, reported to House. H. Rept. 101-364.

Nov. 21, 1989. Conference report filed. H. Rept. 101-386.

Nov. 21, 1989. House agreed to conference report by a record vote of of 272 yeas, 128 nays.

Nov. 21, 1989. Senate agreed to conference report by voice vote.

Dec. 19, 1989. Approved. Public Law 101-239.

THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990 (OBRA 90)

H.R. 5835 **Oct. 15, 1990**

MR. PANETTA

To provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991.

(Referred to Committee on Budget)

Oct. 15, 1990. House Budget Committee reported an original measure. H. Rept. 101-881.
Oct. 15, 1990. Rules Committee granted a modified closed rule providing three hours of debate.
Oct. 16, 1990. Rules Committee reported to House. H. Res. 509.
Oct. 16, 1990. Rule passed House.
Oct. 16, 1990. House agreed to amendments adopted by the Committee of Whole.
Oct. 16, 1990. Passed House amended by a record vote of 227 yeas, 203 nays.
Oct. 18, 1990. House disagreed to Senate amendments by unanimous consent and agreed to request for conference, and appointed conferees. Representatives Panetta, Gephardt, Frenzel, Gonzalez, Oakar, Wylie, Hawkins, Ford (MI), Goodling, Dingell, Waxman, Lent, Thomas Luken, Sharp, Conyers, Horton, Brooks, Kastenmeier, Moorhead, Clay, Gilman, Anderson, Oberstar, Hammerschmidt, Mineta, Moakley, Derrick, Quillen, Roe, Lloyd, Walker, Montgomery, Applegate, Stump, Rostenkowski, Gibbons, Archer, Stark, Jacobs, and Downey.
Oct. 19, 1990. Passed Senate in lieu of S. 3209 with an amendment by a record vote of 54 yeas, 46 nays.
Oct. 19, 1990. Senate struck all after the Enacting Clause and substituted the language of S. 3209 amended.
Oct. 19, 1990. Senate insists on its amendments and ask for a conferees. Appoints conferees: Senators Leahy, Pryor, Boren, Kerrey, Lugar, Dole, Cochran. From the Committee on Banking, Housing and Urban Affairs, Senators Riegle, Cranston, Dodd, Heinz, D'Amato. From the Committee on Budget SenatorsSasser, Fowler, and Domenici. From the Committee on Commerce, Science and Transportation, Senator Hollings, Inouye, Ford, Exon, Breaux, Rockefeller, Kerry, Danforth, Packwood, Stevens, Kasten, McCain, and Burns. From the Committee on Energy and Natural Resources, Senators Johnston, Bumpers, Ford, McClure, and Domenici. From the Committee on Environment and Public Works, Senators Burdick, Moyniha, Mitchell, Baucus, Graham, Chafee, Simpson, Symms, and Durenberger. From the Committee on Finance, Senators Bentsen, Moynihan, Boren, Mitchell, Pryor, Rockefeller, Packwood, Dole, Roth, Danforth, and Chafee. From the Committee on Governmental Affars, Senators Glenn, Sasser, Pryor, Roth, and Stevens. From the Committee on the Judiciary, Senators DeConcini, Leahy, and Hatch. From the Committee on Labor and Human Resources, Senators Kennedy, Pell, Metzenbaum, Dodd, Hatch, Kassebaum, and Jeffords.From the Committee on Veterans' Affairs, Senators Cranston, DeConcini, Rockefeller, Murkowski, and Simpson.
Oct. 19, 1990. Conference held.
Oct. 19, 1990. Senate appointed conferees for purposes of budget reform and appropriations matter. Senators Byrd, and Hatfield,
Oct. 19, 1990. Speaker appointed additional conferees. Representatives Panetta, Gephardt, Frenzel, Russo, Jenkins, Gradison, de la Garza, Coleman (MO), Huckaby, Gonzalez, Oakar, Wylie, Hawkins, Goodling, Ford (MI), Dingell, Waxman, Lent, Thomas Luken, Sharp,

Nowak, Moakley, Derrick, Beilenson, Frost, Quillen, Pashayan, Roe, Lloyd, Walker, Montgomery, Applegate, Stump, Rostenkowski, Gibbons, Archer, Stark, Jacobs, Downey, Mrazek, Whitten, Pickle, Pursell, Conyers, Synar, Frank, Horton, Mineta, Udall, Miller (CA), Young (AK), Brooks, Kastenmeier, Moorhead, Jones (NC), Tauzin, Davis, Studds, Hertel, Clay, Gilman, Anderson, Oberstar, Hammerschmidt, Mineta, and Nielson (UT).

Oct. 22, 1990. Conference held.

Oct. 26, 1990. Committee on Rules granted a rule waiving all points of order against conference report.

Oct. 27, 1990. Senate passed conference report by a record vote of 54 yeas, 45 nays.

Oct. 27, 1990. Conference report filed in House. H. Rept. 101-964.

Oct. 27, 1990. House passed conference report by a record vote of 228 yeas, 200 nays.

Nov. 5, 1990. Approved. Public Law 101-508.

B. Brief Summary of Major Provisions of Tax Legislation Enacted in the 101st Congress

1. H.R. 3299, the Omnibus Budget Reconciliation Act of 1989, P.L. 101-239

REVENUE-RAISING PROVISIONS

1. Corporate provisions

The Act adopts several modifications to the Federal tax treatment of corporations. Many of these revisions relate to mergers, acquisitions, and excessive levels of corporate debt. One provision bifurcates the yield on certain obligations having original issue discount into an interest portion that is deductible when paid and a portion which has some characteristics of a return on equity. Another provision limits tax refunds arising from interest payments on debt that replaces equity. An additional provision limits a corporate taxpayer's deductions for interest paid to related parties with respect to certain payments of interest to recipients that are not subject to U.S. taxation.

2. Accounting provisions

The Act repeals the percentage-of-completion/capitalized-cost method of accounting, with a modification for certain de minimis amounts allocated to contracts. The Act also modifies the treatment of costs of acquiring franchises, trademarks and trade names, allowing an amortization of certain capital costs over a 25-year period.

3. Excise tax provisions

The Act suspends the Airport and Airway Trust Fund tax reduction trigger, imposes a tax on certain ozone-depleting chemicals, and increases the petroleum excise tax for funding the Oil Spill Liability Trust Fund. The Act also modifies certain other present-law excise tax provisions.

4. Employee Stock Ownership Plans ("ESOPs")

The Act repeals the partial interest exclusion for certain ESOP loans, and limits the deduction for dividends paid on ESOP stock. Generous transition relief is provided.

5. Miscellaneous revenue-raising provisions

The Act accelerates the time of collection of the payroll tax deposit for other taxes to be deposited greater than $100,000. In addition, the Act contains several miscellaneous revenue-raising provisions with respect to the laws governing tax-exempt bonds and foreign tax rules.

EXTENSIONS OF EXPIRING TAX PROVISIONS

The Act extends, with modifications, several expiring tax provisions for three-quarters of 1990, or for a period ending on Sept. 30, 1990. The list of extended expiring tax provisions includes the following: Exclusion for employer-provided educational assistance; targeted jobs tax credit; mortgage revenue bonds and mortgage credit certificates; research and development expenses; low-income housing tax credit; allocation of research and development expenses; qualified small-issue bonds; business energy tax credits for solar, geothermal and ocean thermal property; deduction for health insurance expenses of self-employed individuals; and exclusion for employer-provided group legal services.

SIMPLIFICATION OF THE TAX LAWS

1. Corporate minimum tax provisions

The Act adopts a comprehensive simplification of the corporate minimum tax, including removing all references to the taxpayer's book treatment in computing the present-law adjusted current earnings preference, expanding the availability of the minimum tax credit and allowing, as is currently allowed for regular tax purposes, a dividends-received deduction for minimum tax purposes.

2. Revision of civil penalties

The Act includes modifications that improve the penalty provisions of the tax law. In general, various accuracy penalties are consolidated and coordinated to eliminate stacking of penalties, and other penalties are modified.

3. Arbitrage rebate

The Act extends the present-law 6-month exception from arbitrage rebate to 2 years for certain bonds issued for construction projects.

2. H.R. 5835, the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508

TAX CREDITS

The Earned Income Tax Credit (EITC) is a refundable tax credit that is available to low-income families with at least one child. In 1990, the maximum credit equaled 14 percent of the first $6,810 of earned income. This credit was increased and modified to provide the following: an adjustment for family size, an additional 6-percent credit for the cost of health insurance that covers a child, and an additional 5-percent credit for families with a child under age 1.

Each of these credits uses the same eligibility and income phaseout rules that were used previously for the EITC. In 1990, the EITC began to phase out for families with an adjusted gross income of $10,740, and was completely phased out at a level of $20,270. (The projected income phaseout levels for 1991 are $11,190 and $21,130. The projected 1991 maximum credit under current law would be $994.)

The EITC modifications are as follows:

(a) The EITC is increased and adjusted for family size, beginning with taxable year 1991, to provide the following basic credits:

In 1991—
  one child = 16.7-percent credit;
  two or more children = 17.3-percent credit (projected 1991 maximum of $1,186 for one child; $1,228 for two or more children)
In 1992—
  one child = 17.6-percent credit;
  two or more children = 18.4-percent credit
In 1993—
  one child = 18.5 percent credit;
  two or more children = 19.5-percent credit
In 1994 and thereafter—
  one child = 23-percent credit;
  two or more children = 25-percent credit.

The 5 year revenue cost of this increase in the EITC is $12.4 billion.

(b) Beginning with taxable year 1991, a portion of the EITC is earmarked to provide a credit for the cost of health insurance that covers a child. The credit is equal to 6 percent of earnings (but no more than actual cost). The projected maximum credit is $426 in 1991. The 5-year cost of the health insurance credit is $5.2 billion.

(c) Beginning with taxable year 1991, a family with a child under age 1 at the end of the taxable year is eligible for a credit of 5 percent of earnings. The projected maximum credit is $355 in 1991. The 5-year cost of the credit is $0.7 billion. A family that receives this credit is not eligible to receive the dependent care tax credit.

REVENUE PROVISIONS

1. Provisions affecting individuals

For tax years beginning before Jan. 1, 1991, the top marginal rate for individuals was 28 percent. However, the gradual elimination (the "phaseout") of certain tax benefits for high-income taxpayers produced a top 33-percent marginal rate (often called the "bubble") for certain taxpayers. The Act makes the following modifications:

(a) the 33-percent bubble is eliminated for years after 1990. Under the Act, the top statutory marginal rate is 31 percent. The 31-percent marginal rate begins at the income level where the 33-percent rate bubble began under prior law. All taxpayers with income at or above this point are subject to the 31-percent rate on that income.

(b) The Act provides that the dependency exemptions of high-income taxpayers are phased out. (The dependency exemption in 1991 is a $2,150 deduction for the taxpayer, the taxpayer's spouse, and each of the taxpayer's dependents). The phaseout in 1991 is effective for married couples with adjusted gross income between $150,000 and $272,500; and for single individuals with adjusted gross income between $100,000 and $222,500. This phaseout effectively raises the taxpayer's marginal rate by 0.5 percent for every dependency exemption claimed. For income above the phaseout range, the taxpayer's marginal rate is 31 percent.

(c) The Act provides, for years after 1990, that a taxpayer's itemized deductions are reduced by 3 percent of the taxpayer's adjusted gross income in excess of $100,000. The $100,000 threshold is the same for married and single taxpayers. These thresholds are indexed for inflation.

In addition, the Act increases the cap on wages subject to the Medicare hospital insurance (HI) tax. Under the Act the cap equals $125,000 for 1991. As under prior law, the $125,000 cap is indexed for growth in wages. The Act does not affect the cap on wages for Social Security payroll taxes other than the HI tax. The HI tax equals 1.45 percent on wages up to the cap, payable by both the employer and employee (for a total 2.9 percent). Both the employer and employee's share are applicable to wages up to $125,000.

2. Excise taxes

The Act establishes an excise tax on certain luxury items generally equal to 10 percent of: (i) the price of certain passenger vehicles exceeding $30,000, (ii) the price of certain aircraft, (iii) boats to the extent the price exceeds $100,000, and (iv) jewelry and furs to the extent the price exceeds $10,000. In addition, OBRA 1990 increases excise taxes on distilled spirits, wine and beer, and tobacco products. Further, the Act increases certain other excise taxes, including excise taxes on highway and motorboat fuels, and certain aviation taxes.

3. Provisions affecting businesses

The Act contains a series of business tax provisions, including provisions to (i) require the accrual of redemption premium of certain preferred stock, (ii) expand the definition of a corporate equity reduction transaction (CERT) to include the acquisition of 50 percent of more of the stock of any corporation regardless of whether the corporation was a member of an affiliated group (unless an election under sec. 338 was made to treat the acquisition as an acquisition of assets), (iii) impose corporate tax on divisive transactions in connection with certain changes of ownership, provided that a shareholder's 50 percent ownership is attributable to stock the shareholder acquired directly or indirectly in a purchase or certain similar transactions within the previous 5 years, (iv) modify the treatment of certain debt-for-debt exchanges and stock-for-debt exchanges, (v) expand and clarify reporting and allocation rules for certain asset acquisitions, and (vi) increase the rate of interest payable on large corporate underpayments.

In addition, the Act contains a provision requiring the amortization of policy acquisition expense of insurance companies, and a provision reducing the deduction allowed to property and casualty insurance companies for losses incurred, both paid and unpaid, by estimated recoveries of salvage and subrogation claims attributable to such losses.

The Act also provides several energy incentives, including extension of the credit for nonconventional fuels, a tax credit for costs attributable to enhanced oil recovery projects and qualified exploratory costs, and certain relief from the alternative minimum tax for oil and gas operations.

4. Foreign and compliance related provisions

The Act includes provisions: (i) enhancing information and reporting under sec. 6038A of the Internal Revenue Code, (ii) applying the provisions of sec. 6038A to certain foreign corporations conducting a trade or business in the United States and extending the application of such provisions, (iii) creating a limited suspension of the statute of limitations of corporations during proceedings to enforce certain summonses, (iv) modifying the accuracy-related penalty to apply more effectively to transfer price adjustments under sec. 482, and (v) clarifying that certain disclosure is permitted by the Internal Revenue Service to persons providing services to the IRS, such as expert witnesses.

5. Energy related provisions

The Act contains several energy incentive tax provisions as follows: (1) The Act extends the section 29 credit for nonconventional fuels for 2 years and makes eligible for the credit certain tight formation gas. (2) The Act extends the alcohol fuels credit until December 31, 2000; the amount of the credit is reduced from 60 cents per gallon to 54 cents per gallon, but small producers are allowed a new 10-cents-per-gallon income tax credit. The alternative 6-cents-per-gallon excise tax exemption is reduced to 5.4 cents per gallon of alcohol mixture and is extended through September 30, 2000. (3) The Act creates a new 15 percent credit for qualified enhanced oil recovery costs. (4) The Act increases from 50 percent to 100 percent the net income limitation on oil and gas percentage depletion, repeals the prohibition on claiming percentage depletion on transferred proven oil and gas properties, and increases up to 10 percentage points for marginal production the preexisting 15 percent statutory percentage depletion rate. (5) Finally, the Act provides alternative minimum tax ("AMT") relief for oil and gas operations, by providing a special energy deduction for nonintegrated companies. Generally, the special energy deduction removes from the AMT base a portion of the AMT preferences that otherwise would apply for intangible drilling costs and marginal production depletion.

6. Extension of expiring provisions

The Act extends several provisions until Dec. 31, 1991. These provisions expired on Sept. 30, 1990. These provisions include the allocation of research and experimental expenditures, the research and development credit, employer-provided educational assistance, group legal service plans, the targeted jobs tax credit, the low-income housing credit, the qualified mortgage bond program, the qualified small issue bond program, and other rules.

PART VII. TAXPAYER RIGHTS

"YOUR RIGHTS AS A TAXPAYER"

[Text of Internal Revenue Service Publication No. 1 (10–90)

As a taxpayer, you have the right to be treated fairly, professionally, promptly, and courteously by Internal Revenue Service employees. Our goal at the IRS is to protect your rights so that you will have the highest confidence in the integrity, efficiency, and fairness of our tax system. To ensure that you always receive such treatment, you should know about the many rights you have at each step of the tax process.

FREE INFORMATION AND HELP IN PREPARING RETURNS

You have the right to information and help in complying with the tax laws. In addition to the basic instructions we provide with the tax forms, we make available a great deal of other information.

Taxpayer publications. We publish over 100 free taxpayer information publications on various subjects. One of these, Publication 910, *Guide to Free Tax Services,* is a catalog of the free services and publications we offer. You can order all publications and any tax forms or instructions you need by calling us toll-free at 1–800–TAX–FORM (829–3676).

Other assistance. We provide walk-in tax help at many IRS offices and recorded telephone information on many topics through our *Tele-Tax* system. The telephone numbers for *Tele-Tax*, and the topics covered, are in certain tax forms' instructions and publications. Many of our materials are available in Braille (at regional libraries for the handicapped) and in Spanish. We provide help for the hearing impaired via special telephone equipment.

We have informational videotapes that you can borrow. In addition, you may want to attend our education programs for specific groups of taxpayers, such as farmers and those with small businesses.

In cooperation with local volunteers, we offer free help in preparing tax returns for low-income and elderly taxpayers through the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) Programs. You can get information on these programs by calling the toll-free telephone number for your area.

Copies of tax returns. If you need a copy of your tax return for an earlier year, you can get one by filling out Form 4506, *Request for Copy of Tax Form*, and paying a small fee. However, you often only need certain information, such as the amount of your reported income, the number of your exemptions, and the tax shown on the return. You can get this information free if you write or visit an IRS office or call the toll-free number for your area.

PRIVACY AND CONFIDENTIALITY

You have the right to have your personal and financial information kept confidential. People who prepare your return or represent you *must* keep your information confidential.

You also have the right to know why we are asking you for information, exactly how we will use any information you give, and what might happen if you do not give the information.

Information sharing. Under the law, we can share your tax information with State tax agencies and, under strict legal guidelines, the Department of Justice and other federal agencies. We can also share it with certain foreign governments under tax treaty provisions.

COURTESY AND CONSIDERATION

You are always entitled to courteous and considerate treatment from IRS employees. If you ever feel that you are not being treated with fairness, courtesy, and consideration by an IRS employee, you should tell the employee's supervisor.

PROTECTION OF YOUR RIGHTS

The employees of the Internal Revenue Service will explain and protect your rights as a taxpayer at all times. If you feel that this is not the case, you should discuss the problem with the employee's supervisor. Your local Problem Resolution Officer will assist you if you are unable to resolve the problem with the employee's supervisor.

COMPLAINTS

If for any reason you have a complaint about the IRS, you may write to the District Director or Service Center Director for your area. We will give you the name and address if you call our toll-free phone number listed later.

REPRESENTATION AND RECORDINGS

Throughout your dealings with us, you can represent yourself, or, generally with proper written authorization, have someone represent you in your absence. During an interview, you can have someone accompany you.

If you want to consult an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, we will stop and reschedule the interview. We cannot suspend the interview if you are there because of an administrative summons.

You can generally make an audio recording of an interview with an IRS Collection or Examination officer. Your request to record the interview should be made in writing, and must be reviewed 10 days before the interviews. You must bring your own recording equipment. We also can record an interview. If we do so, we will notify you 10 days before the meeting and you can get a copy of the recording at your expense.

PAYMENT OF ONLY THE REQUIRED TAX

You have the right to plan your business and personal finances so that you will pay the least tax that is due under the law. You are liable only for the correct amount of tax. Our purpose is to apply the law consistently and fairly to all taxpayers.

IF YOUR RETURN IS QUESTIONED

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change. Or, you may receive a refund.

Examination and inquiries by mail. We handle many examinations and inquiries entirely by mail. We will send you a letter with either a request for more information or a reason why we believe a change needs to be made to your return. If you give us the requested information or provide an explanation, we may or may not agree with you and we will explain the reasons for any changes. You should not hesitate to write to us about anything you do not understand. If you cannot resolve any questions through the mail, you can request a personal interview. You can appeal through the IRS and the courts. You will find instructions with each inquiry or in Publication 1383, *Correspondence Process.*

Examination by interview. If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If the time or place we suggest is not convenient, the examiner will try to work out something more suitable. However, the IRS makes the final determination of how, when, and where the examination will take place. You will receive an explanation of your rights and of the examination process either before or at the interview.

If you do not agree with the examiner's report, you may meet with the examiner's supervisor to discuss your case further.

Repeat examinations. We try to avoid repeat examinations of the same items, but sometimes this happens. If we examined your tax return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the repeat examination.

Explanation of changes. If we propose any changes to your return, we will explain the reasons for the changes. It is important that you understand these reasons. You should not hesitate to ask about anything that is unclear to you.

Interest. You must pay interest on additional tax that you owe. The interest is figured from the due date of the return. But if our error caused a delay in your case, and this was grossly unfair, we may reduce the interest. Only delays caused by procedural or mechanical acts not involving the exercise of judgment or discretion qualify. If you think we caused such a delay, please discuss it with the examiner and file a claim for refund.

Business taxpayers. If you are in an individual business, the rights covered in this publication generally apply to you. If you are a member of a partnership or a shareholder in a small business corporation, special rules may apply to the examination of your partnership or corporation items. The examination of partnership items is discussed in Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund.* The rights covered in this publication generally apply to exempt organizations and sponsors of employee plans.

AN APPEAL OF THE EXAMINATION FINDINGS

If you don't agree with the examiner's findings, you have the right to appeal them. During the examination process, you will be given information about your appeal rights. Publication 5, *Appeal Rights and Preparation of Protests for Unagreed Cases,* explains your appeal rights in detail and tells you exactly what to do if you want to appeal.

Appeals Office. You can appeal the findings of an examination within the IRS through our Appeals Office. Most differences can be settled through this appeals system without expensive and time-consuming court trials. If the matter cannot be settled to your satisfaction in Appeals, you can take your case to court.

Appeals to the courts. Depending on whether you first pay the disputed tax, you can take your case to the U.S. Tax Court, the U.S. Claims Court, or your U.S. District Court. These courts are entirely independent of the IRS. As always, you can represent yourself or have someone admitted to practice before the court represent you.

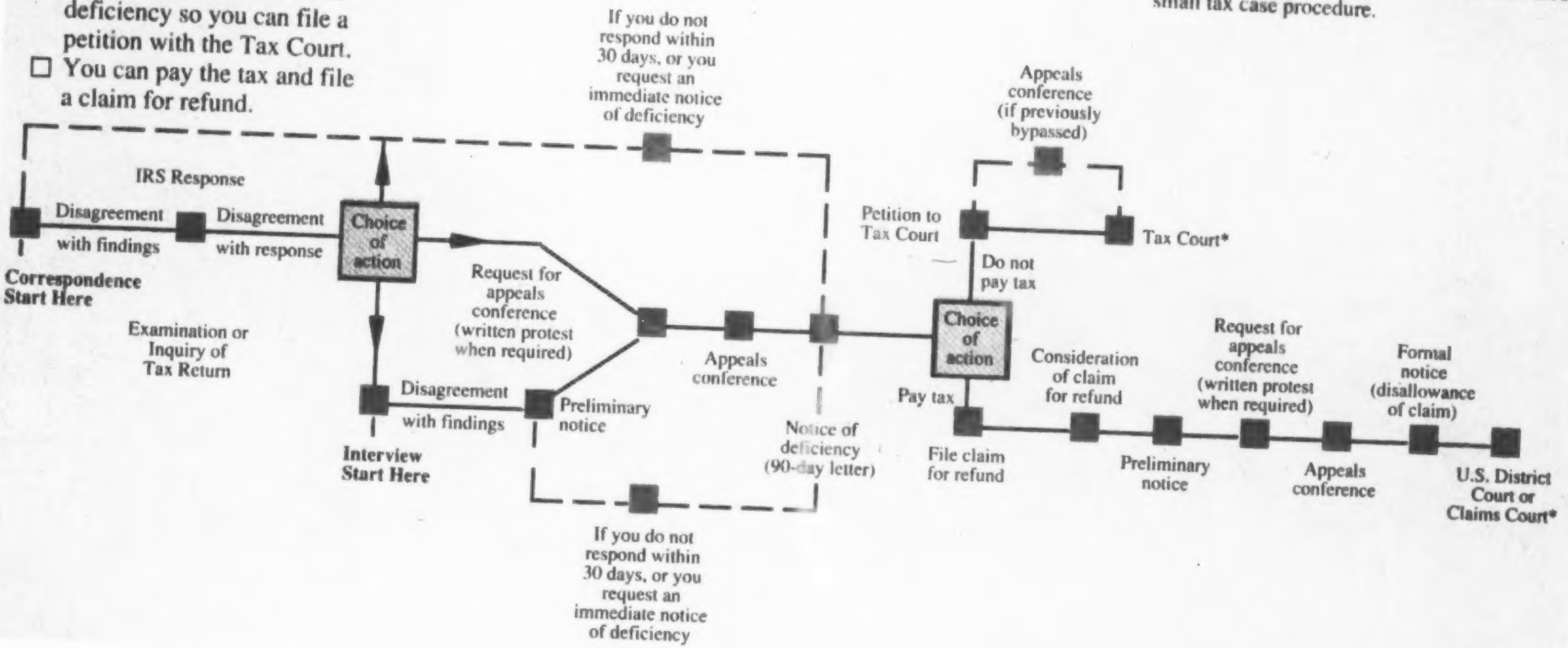
If you disagree about whether you owe additional tax, you generally have the right to take your case to the U.S. Tax Court if you have not yet paid the tax. Ordinarily, you have 90 days from the time we mail you a formal notice (called a "notice of deficiency") telling you that you owe additional tax, to file a petition with the U.S. Tax Court. You can request simplified small tax case procedures if your case is $10,000 or less for any period or year. A case settled under these procedures cannot be appealed.

If you have already paid the disputed tax in full, you may file a claim for refund. If we disallow the claim or do not take action within 6 months, then you may take your case to the U.S. Claims Court or your U.S. District Court.

The amount of tax withheld from your wages is determined by the W-4, *Employees Withholding Allowance Certificate,* you give your employer. If your certificate is incorrect, the IRS may instruct your employer to increase the amount. We may also assess a penalty. You have the right to appeal the decision. Or, you can file a claim for refund and go to the U.S. Claims Court or U.S. District Court.

Income Tax Appeal Procedure

At any stage
- ☐ You can agree and arrange to pay.
- ☐ You can ask for a notice of deficiency so you can file a petition with the Tax Court.
- ☐ You can pay the tax and file a claim for refund.


IRS Response
Disagreement with findings
Disagreement with response
Correspondence Start Here
Examination or Inquiry of Tax Return
Choice of action
Request for appeals conference (written protest when required)
Disagreement with findings
Interview Start Here
Preliminary notice
If you do not respond within 30 days, or you request an immediate notice of deficiency
Appeals conference
Notice of deficiency (90-day letter)
If you do not respond within 30 days, or you request an immediate notice of deficiency
Petition to Tax Court
Appeals conference (if previously bypassed)
Tax Court*
Do not pay tax
Choice of action
Pay tax
File claim for refund
Consideration of claim for refund
Preliminary notice
Request for appeals conference (written protest when required)
Appeals conference
Formal notice (disallowance of claim)
U.S. District Court or Claims Court*

*Further appeals to the courts may be possible, except there is no appeal under the Tax Court's small tax case procedure.

Recovering litigation expenses. If the court agrees with you on most issues in your case, and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. To do this, you must have used all the administrative remedies available to you within the IRS. This includes going through our Appeals system and giving us all the information necessary to resolve the case.

Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, will help you more fully understand your appeal rights.

FAIR COLLECTION OF TAX

Whenever you owe tax, we will send you a bill describing the tax and stating the amounts you owe in tax, interest, and penalties. Be sure to check any bill you receive to make sure it is correct. You have the right to have your bill adjusted if it is incorrect, so you should let us know about an incorrect bill right away.

If we tell you that you owe tax because of a math or clerical error on your return, you have the right to ask us to send you a formal notice (a "notice of deficiency") so that you can dispute the tax, as discussed earlier. You do not have to pay the additional tax at the same time that you ask us for the formal notice, if you ask for it within 60 days of the time we tell you of the error.

If the tax is correct, we will give you a specific period of time to pay the bill in full. If you pay the bill within the time allowed, we will not have to take any further action.

We may request that you attend an interview for the collection of tax. You will receive an explanation of your rights and of the collection process either before or at the interview.

Your rights are further protected because we are not allowed to use tax enforcement results to evaluate our employees.

Payment arrangements. You should make every effort to pay your bill in full. If you can't, you should pay as much as you can and contact us right away. We may ask you for a complete financial statement to determine how you can pay the amount due. Based on your financial condition, you may qualify for an installment agreement. We can arrange for these payments to be made through payroll deductions. We will give you copies of all agreements you make with us.

If we approve a payment agreement, the agreement will stay in effect only if:

You give correct and complete financial information,

You pay each installment on time,

You satisfy other tax liabilities on time,

You provide current financial information when asked, and

We determine that collecting the tax is not at risk.

Following a review of your current finances, we may change your payment agreement. We will notify you 30 days before any change to your payment agreement and tell you why we are making the change.

We will not take any enforcement action (such as recording a tax lien or levying on or seizing property), until after we have tried to contact you and given you the chance to voluntarily pay any tax due. Therefore, it is very important for you to respond right away to our attempts to contact you (by mail, telephone, or personal visit). If you do not respond, we may have no choice but to begin enforcement.

Release of liens. If we have to place a lien on your property (to secure the amount of tax due), we must release the lien no later than 30 days after finding that you have paid the entire tax and certain charges, the assessment has become legally unenforceable, or we have accepted a bond to cover the tax and certain charges.

Recovery of damages. If we knowingly or negligently fail to release a lien under the circumstances described above, and you suffer economic damages because of our failure, you can recover your actual economic damages and certain costs.

If we recklessly or intentionally fail to follow the laws and regulations for the collection of tax, you can recover actual economic damage and certain costs.

In each of the two situations above, damages and costs will be allowed within the following limits. You must exhaust all administrative remedies available to you. The damages will be reduced by the amount which you could have reasonably prevented. You must bring suit within 2 years of the action.

Incorrect lien. You have the right to appeal our filing of a Notice of Federal Tax Lien if you believe we filed the lien in error. If we agree, we will issue a certificate of release, including a statement that we filed the lien in error.

A lien is incorrect if:

You paid the entire amount due before we filed the lien,

The time to collect the tax expired before we filed the lien

We made a procedural error in a deficiency assessment, or

We assessed a tax in violation of the automatic stay provisions in a bankruptcy case.

Levy. We will generally give you 30 days notice before we levy on any property. The notice may be given to you in person, mailed to you, or left at your home or workplace. On the day you attend a collection interview because of a summons, we cannot levy your property unless the collection of tax is in jeopardy.

Property that is exempt from levy. If we must seize your property, you have the legal right to keep:

Necessary clothing and schoolbooks,

A limited amount of personal belongings, furniture, and business or professional books and tools,

Unemployment and job training benefits, workers' compensation, welfare, certain disability payments, and certain pension benefits,

The income you need to pay court-ordered child support,

Mail,

An amount of weekly income equal to your standard deduction and allowable personal exemptions, divided by 52, and

Your main home, unless collection of tax is in jeopardy or the district director (or assistant) approves the levy in writing.

If your bank account is levied after June 30, 1989, the bank will hold your account up to the amount of the levy for 21 days. This gives you time to settle any disputes concerning ownership of the funds in the account.

We generally must release a levy issued after June 30, 1989, if:

You pay the tax, penalty, and interest for which the levy was made,

The IRS determines the release will help collect the tax,

You have an approved installment agreement for the tax on the levy,

The IRS determines the levy is creating an economic hardship, or

The fair market value of the property exceeds the amount of the levy and release would not hinder the collection of tax.

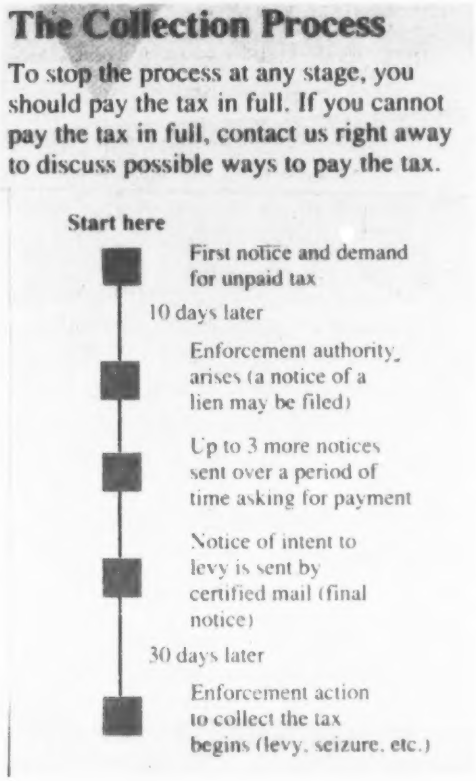
If at any time during the collection process you do not agree with the collection officer, you can discuss your case with his or her supervisor.

If we seize your property, you have the right to request that it be sold within 60 days after your request. You can request a time period greater than 60 days. We will comply with your request unless it is not in the best interest of the government.

Access to your private premises. A court order is not generally needed for a collection officer to seize your property. However, you don't have to allow the employee access to your private premises, such as your home or the nonpublic areas of your business, if the employee does not have court authorization to be there.

Withheld taxes. If we believe that you were responsible for seeing that a corporation paid us income and social security taxes withheld from its employees, and the taxes were not paid, we may look to you to pay an amount based on the unpaid taxes. If you feel that you don't owe this, you have the right to discuss the case with the collection officer's supervisor. You may also request an appeals hearing within 30 days of our proposed assessment of employment taxes. You generally have the same IRS appeal rights as other taxpayers. Because the U.S. Tax Court has no jurisdiction in this situation, you must pay at least part of the withheld taxes and file a claim for refund in order to take the matter to the U.S. District Court or U.S. Claims Court.

The amount of tax withheld from your wages is determined by the W-4, *Employees Withholding Allowance Certificate,* you give your employer. If your certificate is incorrect, the IRS may instruct your employer to increase the amount. We may also assess a penalty. You have the right to appeal the decision. Or, you can file a claim for refund and go to the U.S. Claims Court or U.S. District Court.



The Collection Process

To stop the process at any stage, you should pay the tax in full. If you cannot pay the tax in full, contact us right away to discuss possible ways to pay the tax.

Start here

First notice and demand for unpaid tax

10 days later

Enforcement authority arises (a notice of a lien may be filed)

Up to 3 more notices sent over a period of time asking for payment

Notice of intent to levy is sent by certified mail (final notice)

30 days later

Enforcement action to collect the tax begins (levy, seizure, etc.)

Publications 586A, *The Collection Process (Income Tax Accounts)*, and 594, *The Collection Process (Employment Tax Accounts)*, will help you understand your rights during the collection process.

REFUND OF OVERPAID TAX

Once you have paid all your tax, you have the right to file a claim for a refund if you think the tax is incorrect. Generally, you have 3 years from the date you filed the return or 2 years from the date you paid the tax (whichever is later) to file a claim. If we examine your claim for any reason, you have the same rights that you would have during an examination of your return.

Interest on refunds. You will receive interest on any income tax refund delayed more than 45 days after the *later* of either the date you filed your return or the date your return was due.

Checking on your refund. Normally, you will receive your refund about 6 weeks after you file your return. If you have not received your refund within 8 weeks after mailing your return, you may check on it by calling the toll-free *Tele-Tax* number in the tax forms' instructions.

If we reduce your refund because you owe a debt to another Federal agency or because you owe child support, we must notify you of this action. However, if you have a question about the debt that caused the reduction, you should contact the other agency.

CANCELLATION OF PENALTIES

You have the right to ask that certain penalties (but not interest) be cancelled (abated) if you can show reasonable cause for the failure that led to the penalty (or can show that you exercised due diligence, if that is the applicable standard for that penalty).

If you relied on wrong advice you received from IRS employees on the toll-free telephone system, we will cancel certain penalties that may result. But you have to show that your reliance on the advice was reasonable.

If you relied on incorrect written advice from the IRS in response to a written request you made after January 1, 1989, we will cancel any penalties that may result. You must show that you gave sufficient and correct information and filed your return after you received the advice.

SPECIAL HELP TO RESOLVE YOUR PROBLEMS

We have a Problem Resolution Program for taxpayers who have been unable to resolve their problems with the IRS. If you have a tax problem that you cannot clear up through normal channels, write to the Problem Resolution Office in the district or Service Center with which you have the problem. You may also reach the Problem Resolution Office by calling the IRS taxpayer assistance number for your area. If you are hearing-impaired with TV/Telephone (TTY) access, you may call 1-800-829-4059.

If your tax problem causes (or will cause) you to suffer a significant hardship, additional assistance is available. A significant hardship may occur if you cannot maintain necessisites such as food, clothing, shelter, transporation, and medical treatment.

There are two ways you can apply for relief. You can submit Form 911, *Application for Taxpayer Assistance Order to Relieve Hardship,* which you can order by calling 1–800–TAX–FORM (829-3676). You can choose instead to call 1-800-829-1040, to request relief from your hardship. The Taxpayer Ombudsman, Problem Resolution Officer, or other official will then review your case and may issue a Taxpayer Assistance Order (TAO), to suspend IRS action.

TAXPAYER ASSISTANCE NUMBERS

You should use the telephone number shown in the white pages of your local telephone directory under U.S. Government, Internal Revenue Service, Federal Tax Assistance. If there is not a specific number listed, call toll-free 1-800-829-1040. You can also find these phone numbers in the instructions for Form 1040.

You may also use these numbers to reach the Problem Resolution Office. Ask for the Problem Resolution Office when you call.

U.S. taxpayers abroad may write for information to:

Internal Revenue Service
Attn: IN:C:TPS
950 L'Enfant Plaza South, S.W.
Washington, D.C. 20024

You can also contact your nearest U.S. Embassy for information about what services and forms are available in your location.

PART VIII. DESCRIPTION OF TAX PROVISIONS EXPIRING IN 1991 AND 1992

[Joint Committee on Taxation, JCS-2-91, February 8, 1991]

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INTRODUCTION

This pamphlet,[1] prepared by the staff of the Joint Committee on Taxation, provides a brief description of tax provisions scheduled to expire in 1991 and 1992 (102d Congress), including a reference to the legislative background of each provision and any related Administration budget proposal.[2]

The first part of the pamphlet is a summary listing of tax provisions scheduled to expire in 1991 and 1992. The second part is a description of: (A) the 1991 expiring tax provisions; and (B) the 1992 expiring tax provisions. The Appendix presents the estimated revenue effects for fiscal years 1991-1996 of permanently extending the 1991 and 1992 expiring tax provisions.

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[1] This pamphlet may be cited as follows: Joint Committee on Taxation, *Description of Tax Provisions Expiring in 1991 and 1992* (JCS-2-91), February 28, 1991.

[2] Several of the expiring tax provisions are also described in Joint Committee on Taxation, *Summary of Revenue Provisions in the President's Fiscal Year 1992 Budget Proposal* (JCS-1-91), February 25, 1991.

I. SUMMARY

The following is a summary listing of tax provisions scheduled to expire in 1991 and 1992 (102nd Congress).

1991 expiring tax provisions

The following tax provisions are generally scheduled to expire after December 31, 1991, except for item (6): [3]

(1) Exclusion for employer-provided educational assistance benefits (Code sec. 127);

(2) Exclusion for group legal services benefits and the tax exemption for an organization providing group legal services as part of a qualified group legal services plan (secs. 120 and 501(c)(20));

(3) Deduction for health insurance costs of self-employed individuals (sec. 162(l));

(4) Tax exemption for qualified mortgage bonds and election to issue mortgage credit certificates (secs. 143 and 25);

(5) Tax exemption for qualified small-issue manufacturing bonds (sec. 144(a));

(6) Rules for allocation and apportionment of research expenses (secs. 861(b)), 862(b), 863(b), and 864(f)); [4]

(7) Tax credit for qualified research expenditures (sec. 41);

(8) Tax credit for low-income rental housing (sec. 42);

(9) Targeted jobs tax credit (sec. 51);

(10) Business energy tax credits for solar and geothermal property (sec. 48(a));

(11) Tax credit for orphan drug clinical testing expenses (sec. 28); and

(12) Minimum tax exception for gifts of appreciated tangible property (sec. 57).

1992 expiring tax provisions

The following tax provisions are scheduled to expire in 1992:

(1) Access to tax information by the Department of Veterans Affairs (sec. 6103); [5]

(2) Placed-in-service date for the nonconventional fuels production credit (sec. 29); [6] and

(3) Excise tax on certain vaccines for the Vaccine Injury Compensation Trust Fund (secs. 4131 and 9510).[7]

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[3] These tax provisions, except for (12), were last extended in the Revenue Reconciliation Act of 1990 ("1990 Act") (Title XI of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508). Item (12) was enacted in the 1990 Act as a one-year exception.

[4] Scheduled to expire on August 1, 1991.

[5] This provision was enacted in the 1990 Act, and is scheduled to expire after September 30, 1992.

[6] This provision was last extended in the 1990 Act, and is scheduled to expire after December 31, 1992.

[7] These provisions were enacted in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), and are scheduled to expire after December 31, 1992, under certain circumstances.

II. DESCRIPTION OF EXPIRING TAX PROVISIONS

A. 1991 Expiring Tax Provisions

1. Exclusion for employer-provided educational assistance

Present Law

Under present law, an employee generally must include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to the employee, unless the cost of such assistance qualifies as a deductible job-related expense of the employee. Amounts expended for education qualify as deductible job-related expenses if the education (1) maintains or improves skills required for the employee's current job, or (2) meets the express requirements of the individual's employer that are imposed as a condition of continued employment (Treas. Reg. sec. 1.162-5(a)). In the case of an employee, such expenses (if not reimbursed by the employer) are deductible only to the extent that, when aggregated with other miscellaneous itemized deductions, they exceed 2 percent of the taxpayer's adjusted gross income. No deduction is allowed for expenses incurred to qualify for a new trade or business (e.g., for law school tuition paid by a paralegal or accountant).

Under present law, an employee's gross income and wages for income and employment tax purposes do not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts are paid or incurred pursuant to an educational assistance program that meets certain requirements (sec. 127). One such requirement is that the educational assistance provided may not discriminate in favor of highly compensated employees in certain respects. This exclusion, which expires for taxable years beginning after December 31, 1991, is limited to $5,250 of educational assistance with respect to an individual during a calendar year.

To the extent that employer-provided educational assistance is not excludable from income because it exceeds the maximum dollar limitation it may be excludable from income as a working condition fringe benefit (sec. 132(d)), provided the requirements of that section are otherwise satisfied (e.g., the education is job related as defined under sec. 162).

Beginning in 1985, the Congress required that employers file information returns with respect to educational assistance programs (sec. 6039D). This requirement was intended to collect data with respect to the use of such programs so that the Congress could evaluate the effectiveness of the exclusion.

Legislative Background

The section 127 exclusion was first established on a temporary basis by the Revenue Act of 1978 (through 1983). It subsequently was extended, again on a temporary basis, by Public Law 98-611 (through 1985), by the Tax Reform Act of 1986 (through 1987), by the Technical and Miscellaneous Revenue Act of 1988 (through 1988), by the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), and by the Omnibus Reconciliation Act of 1990 (through 1991). Public Law 98-611 adopted a $5,000 annual limit on the exclusion; this limit was subsequently raised to $5,250 in the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 made the exclusion inapplicable to graduate-level courses. The restriction on graduate-level courses was repealed by the Omnibus Reconciliation Act of 1990, effective for taxable years beginning after December 31, 1990.

2. Exclusion for employer-provided group legal services; tax exemption for qualified group legal services organizations (secs. 120 and 501(c)(20) of the Code)

Present Law

Under present law, certain amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) are excluded from the employee's gross income for income and employment tax purposes (sec. 120). The exclusion also applies to any services received by an employee (or the employee's spouse or dependents) or any amounts paid to an employee under such a plan as reimbursement for the cost of legal services for the employee (or the employee's spouse or dependents). The exclusion is limited to an annual premium value of $70. In order to be a plan under which employees are entitled to tax-free benefits, a group legal services plan is required to fulfill certain requirements. One such requirement is that group legal services benefits may not discriminate in favor of highly compensated employees in certain respects.

The exclusion for group legal services benefits expires for taxable years beginning after December 31, 1991.

In addition, present law provides tax-exempt status for an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan (sec. 501(c)(20)). The tax exemption for such an organization expires for taxable years beginning after December 31, 1991.

Beginning in 1985, the Congress required that employers file information returns with respect to qualified group legal services plans (sec. 6039D). This requirement was intended to collect data with respect to the use of such plans so that the Congress could evaluate the effectiveness of the exclusion.

Legislative Background

The section 120 exclusion and the section 501(c)(20) exemption were enacted initially on a temporary basis by the Tax Reform Act of 1976 (through 1981). They subsequently were extended, again on a temporary basis, by the Economic Recovery Act of 1981 (through 1984), Public Law 98-612 (through 1985), the Tax Reform Act of 1986 (through 1987), the Technical and Miscellaneous Revenue Act of 1988 (through 1988), the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), and the Omnibus Reconciliation Act of 1990 (through 1991). The Technical and Miscellaneous Revenue Act of 1988 imposed the $70 annual limit on the amount of premium that may be excluded by the employee.

3. Deduction for health insurance costs of self-employed individuals (sec. 162(l) of the Code)

Present Law

Under present law, an employer's contribution to a plan providing accident or health coverage is excludable from an employee's income (sec. 106). No equivalent exclusion is provided for self-employed individuals (i.e., sole proprietors or partners in a partnership).

However, present law provides a deduction for 25 percent of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents. This deduction is allowable in calculating adjusted gross income. A self-employed individual is an individual who has earned income for the taxable year (sec. 401(c)(1)). No deduction is allowable to the extent the deduction exceeds the self-employed individual's earned income for the taxable year from the trade or business with respect to which the plan providing the medical care coverage is established.

The 25-percent deduction is also available to a more than 2-percent shareholder of an S corporation. For purposes of the deduction, the shareholder's wages from the S corporation are treated as his or her earned income. In addition, the Secretary is authorized to prescribe necessary adjustments relating to the application of the deduction in the case of S corporation shareholders.

No deduction is allowable for any taxable year in which the self-employed individual or eligible S corporation shareholder is eligible to participate (on a subsidized basis) in a health plan of an employer of the self-employed individual (or of such individual's spouse).

The amount deductible under this provision is not taken into account in computing net earnings from self-employment (sec. 1402(a)). Therefore, the amounts deductible under this provision do not reduce the income base for determining the self-employed individual's taxes under the Self-Employment Contributions Act (e.g., social security taxes).

The 25-percent deduction expires for taxable years beginning after December 31, 1991.

Legislative Background

The 25-percent deduction for the health insurance costs of self-employed individuals was enacted on a temporary basis by the Tax Reform Act of 1986 (for taxable years beginning before January 1, 1990). Certain technical corrections to the provision were made by the Technical and Miscellaneous Revenue Act of 1988. The Omnibus Budget Reconciliation Act of 1989 extended the deduction for 9 months (for taxable years beginning before October 1, 1990) and clarified that the deduction is available to certain S corporation shareholders. The Omnibus Reconciliation Act of 1990 extended the deduction through 1991.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend for one year the 25-percent deduction for health insurance costs of self-employed individuals.

4. Qualified mortgage bonds and mortgage credit certificates (secs. 143 and 25 of the Code)

Present Law

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used (net of costs of issuance and a reasonably required reserve fund) to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied homes located within the jurisdiction of the issuer of the bonds.

First-time homebuyer requirement

An issue is a QMB only if at least 95 percent of the net proceeds of the issue are used to finance residences for mortgagors who had no present ownership interests in their principal residences during the three-year period before their respective mortgages are executed. This first-time homebuyer requirement does not apply to mortgagors of residences located in targeted areas (as described below), mortgagors who receive qualified home improvement loans, or mortgagors who receive qualified rehabilitation loans.

Income limitations

QMB financing is available only to mortgagors whose family incomes do not exceed 115 percent (100 percent for families of fewer than three persons) of the higher of (1) the median gross income for the area in which the residence is located, or (2) the Statewide median gross income. An adjustment to the mortgagor's qualifying income limitation is made for certain high housing cost areas.

In targeted areas, two-thirds of the mortgage financing provided with the proceeds of each issue must be provided to mortgagors who have family incomes not exceeding 140 percent (120 percent for families of fewer than three persons) of the higher of (1) the median gross income for the area in which the residence is located, or (2) the Statewide median gross income. The remaining one-third of the mortgage financing of each issue may be used to provide mortgage loans without regard to income limitations. A targeted area is defined as (1) a census tract in which at least 70 percent of the families have incomes that are 80 percent or less of the Statewide median family income, or (2) an area of chronic economic distress designated by the Secretary of the Treasury and the Secretary of Housing and Urban Development.

Purchase price limitations

The acquisition cost of a residence financed with QMBs may not exceed 90 percent (110 percent in targeted areas) of the average area purchase price applicable to the residence. The determination of average area purchase prices is made separately (1) with respect to new residences and existing, previously occupied residences, and (2) with respect to one-, two-, three-, and four-family residences.

Loan origination and loan prepayment rules

All unspent proceeds remaining 3 years after the date of issuance of QMBs must be used to redeem bonds within the next succeeding six month period. The amount of any loans originated during that 6-month period will reduce the amount of bonds to be redeemed by the amount of such loans. Further, all loan repayments received ten years or more after the date the bonds are issued must be used to redeem bonds. A *de minimis* exemption of $250,000 is allowed from these redemption requirements. Repayments received during the 10-year period following original issuance may be used to make new loans.

Recapture

All or part of the subsidy provided by qualified QMB financing is recaptured on disposition of assisted housing within 9 years of purchase by mortgagors whose incomes have increased substantially since purchase of their homes. This recapture provision does not apply to home improvement loans.

Mortgage credit certificates

Qualified governmental units may elect to exchange qualified mortgage bond authority for authority to issue mortgage credit certificates (MCCs) (sec. 25). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the residence being financed continues to be the certificate-recipient's principal residence. MCCs are subject to the same eligibility, targeted area, and recapture requirements as QMBs.

Each MCC must represent a credit for 10 to 50 percent of interest on qualifying mortgage indebtedness. The actual dollar amount of an MCC depends on the amount of qualifying interest paid during any particular year and the applicable certificate credit percentage. If the credit percentage exceeds 20 percent, however, the dollar amount of the credit received by the taxpayer for any year may not exceed $2,000.

The aggregate amount of MCCs distributed by an electing issuer may not exceed 25 percent of the volume of QMB exchanged by the State or local government for authority to issue MCCs. For example, a State that is authorized to issue $200 million of qualified mortgage bonds and that elects to exchange $100 million of that bond authority can distribute an aggregate amount of MCCs equal to $25 million.

Legislative Background

The Mortgage Subsidy Bond Tax Act of 1980 first imposed restrictions on the ability of State and local governments to issue tax-exempt bonds to finance mortgage loans on single-family, owner-occupied residences. These restrictions included many of the rules applicable under present law.

The authority of State and local governments to issue tax-exempt qualified mortgage bonds under the 1980 Act expired on December 31, 1983. The Deficit Reduction Act of 1984 extended this authority (with modifications) through December 31, 1987, and enacted the MCC alternative to QMBs.

Authority to issue QMBs and the election to trade in bond volume authority to issue MCCs were extended for one year (through December 31, 1988) by the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 extended the authority to issue QMBs and the election to trade in bond volume authority to issue MCCs for another year (through December 31, 1989), with substantial modifications. The Omnibus Budget Reconciliation of 1989 extended the expiration date of this authority 9 months (through September 30, 1990).

Authority to issue QMBs and the election to trade in bond volume authority to issue MCCs were extended for 15 months, (through December 31, 1991) by the Omnibus Budget Reconciliation Act of 1990. The 1990 Act also made several modifications to the recapture provisions. These modifications were effective as if enacted in the Technical and Miscellaneous Revenue Act of 1988 (the Act which originally enacted the recapture provisions).

5. Qualified small-issue manufacturing bonds (sec. 144(a) of the Code)

Present Law

Interest on certain small issues of private activity bonds is exempt from tax if at least 95 percent of the bond proceeds is used to finance manufacturing facilities or certain land or property for first-time farmers ("qualified small-issue bonds"). For this purpose, manufacturing is defined as the production (including certain processing) of tangible personal property.

Qualified small-issue bonds are issues having an aggregate authorized face amount of $1 million or less. Special limits apply to bonds for first-time farmers. Alternatively, the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the 6-year period beginning three years before the date of the issue and ending three years after that date, may not exceed $10 million.

In determining whether an issue meets the requirements of the small-issue exception, previous qualified small issues (and in the case of the $10-million limitation, capital expenditures during a 6-year period) are taken into account if (1) they are used with respect to a facility located in the same incorporated municipality or the same county (but not in any incorporated municipality) as the facility being financed with the qualified small-issue bonds, and (2) the principal users of both facilities are either the same person, or are two or more related persons.

No principal user of facilities financed with qualified small-issue bonds may benefit from more than $40 million of outstanding private activity bonds (including exempt-facility bonds, qualified redevelopment bonds, and qualified small-issue bonds). For purposes of the $40 million limitation, the face amount of any issue is allocated among persons who are owners or principal users of the bond-financed property during a 3-year test period. Once an allocation to a test-period beneficiary is made, that allocation remains in effect as long as the bonds are outstanding, even if the beneficiary no longer owns or uses the bond-financed property.

If the $40 million limit is exceeded for any owner or principal user as a result of a change during the test period, interest on the issue of qualified small-issue bonds that caused the limit to be exceeded is taxable from the date of issue. The tax-exempt status of interest on other previously issued qualified small-issue bonds is not affected.

Additionally, the aggregate amount of qualified small-issue bond financing for all types of depreciable farm property (including both new and used property) is limited to $250,000 for any person or related persons. The $250,000 is a lifetime limit.

Issuers of qualified small-issue bonds, must receive an allocation from the State private activity volume limitation.

Authority to issue qualified small-issue bonds expires December 31, 1991.

Legislative Background

Substantial modifications to the tax treatment of exempt small-issue industrial development bonds (IDBs) were made by the Tax Equity and Fiscal Responsibility Act of 1982. The 1982 Act also provided that the authority to issue exempt small-issue IDBs would expire after December 31, 1986. The Deficit Reduction Act of 1984 extended the expiration date for qualified small-issue bonds for manufacturing (including farming) facilities to December 31, 1988. The Tax Reform Act of 1986 extended that date to December 31, 1989, while permitting authority to issue these bonds for nonmanufacturing facilities to expire as scheduled.

The Technical and Miscellaneous Revenue Act of 1988 clarified the definition of manufacturing to provide that up to 25 percent of the proceeds of qualified small issue bonds may be used to finance ancillary activities which are carried out at the manufacturing site. The Omnibus Budget Reconciliation Act of 1989 extended the expiration date to September 30, 1990. The Omnibus Budget Reconciliation Act of 1990 extended that date to December 31, 1991.

6. Allocation and apportionment of research expenses (secs. 861(b), 862(b), 863(b), and 864(f) of the Code)

Present Law [8]

In general

U.S. persons are taxable on their worldwide income, including their foreign income. A U.S. person that earns foreign income may incur foreign income tax. Subject to the applicable foreign tax credit limitations, such a person may credit foreign income taxes against its U.S. tax liability. The purpose of the foreign tax credit and the foreign tax credit limitations is to yield primary taxing jurisdiction over U.S. persons' foreign income to foreign governments, while retaining residual taxing jurisdiction over such income for the United States and ensuring that the full U.S. tax is paid on domestic income.

The foreign tax credit limitations operate by separating the taxpayer's total U.S. tax liability before tax credits ("pre-credit U.S. tax") into 2 categories: tax on U.S. source taxable income and tax on foreign source taxable income. Pre-credit U.S. tax on foreign source taxable income is further subdivided by limitation categories, or "baskets," of income. The pre-credit U.S. tax on any particular limitation category of foreign source income serves as the upper limit on credits for foreign taxes on that type of income.

Each foreign tax credit limitation equals total pre-credit U.S. tax times the ratio of the foreign source taxable income in that limitation category to worldwide taxable income. Foreign source taxable income equals foreign source gross income less the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any deductions which cannot definitely be allocated to some item or class of gross income (Code sec. 862(b)). Deductions allocated and apportioned to foreign source gross income must be further allocated or apportioned among the separate limitation categories of foreign source gross income in order to arrive at foreign source taxable income in any one limitation category. Finally, allocation and apportionment of deductions to U.S. source gross income determines the amount of taxpayer's U.S. source taxable income (sec. 861(b)).

The Code generally articulates only the broad principles of how expenses reduce U.S. and foreign source gross income, leaving the Treasury Department to provide detailed rules for the generally fact-specific task of allocating and apportioning expenses. The application of regulations to particular facts and circumstances, therefore, has a significant role in determining the proportions of taxpayers' worldwide taxable income that are treated as derived from foreign sources. These proportions, in turn, control the level of taxpayers' foreign tax credit limitations.

A taxpayer that has paid less foreign tax in each limitation category than the foreign tax credit limitation with respect to that category credits all of its foreign income tax against pre-credit U.S. tax (such a taxpayer is said to have "excess limit" in each of its limitation categories). If the rules for allocating and apportioning deductions are then changed to permit foreign source deductions to be converted to U.S. source deductions, with the result that a greater proportion of the taxpayer's worldwide taxable income is deemed to come from foreign sources, the change cannot decrease the taxpayer's U.S. tax liability on its worldwide income. A taxpayer that has paid foreign taxes in excess of one or more of its foreign tax credit limitations (that is, a taxpayer with "excess credits") cannot currently use all of its foreign income taxes as credits. In this case, a change in the allocation and apportionment rules may result in additional use of foreign tax credits, as follows: The conversion of a foreign source deduction to a U.S. source deduction converts an amount of U.S. source taxable income to foreign source taxable income, thus increasing the foreign tax credit limitation and reducing the taxpayer's current U.S. tax liability by approximately 34 cents for each dollar of deduction that is converted from foreign to U.S. source. Conversely, upon a change in the allocation rules that shifts deductions from U.S. to foreign income, a taxpayer with excess credits (or a taxpayer that previously had excess limit and finds itself, as a result of the rule change, with excess credits) may experience an increase in U.S. tax liability due to a reduction in the amount of its foreign income taxes that remain creditable, thereby increasing its overall worldwide tax liability.

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[8] Some of the provisions discussed in this section were described more comprehensively in Part III of the April 2, 1987 pamphlet, prepared by the staff of the Joint Committee on Taxation for the Senate Committee on Finance, entitled *Description of Proposals Relating to Research and Development Incentive Act of 1987 (S. 58) and Allocation of R&D Expenses to U.S. and Foreign Income (S. 716)* (JCS-6-87).

Treasury Regulation sec. 1.861-8(e)(3)

Treasury Regulations promulgated in 1977 prescribe detailed rules for allocating and apportioning research and experimental expenses for purposes of computing the foreign tax credit limitation of a U.S. person, as well as for other purposes (Treas. Reg. sec. 1.861-8(e)(3)).[9]

This R&D allocation regulation contemplates that taxpayers will sometimes undertake R&D solely to meet legal requirements. In some such cases, the R&D cannot reasonably be expected to generate income (beyond *de minimis* amounts) outside a single geographic source. If so, those deductible R&D expenses reduce gross income only from the geographic source that includes that jurisdiction.

After allocating deductions to meet legal requirements, the regulation generally allows 30 percent of deductible R&D expenses to reduce gross income from the source where over half of the taxpayer's total deductible R&D expenses are incurred. A taxpayer has the opportunity to apportion more than 30 percent of its R&D deduction exclusively to the source where R&D is performed if it can establish that a significantly higher percentage is warranted because the R&D is reasonably expected to have a very limited or long-delayed application outside that geographic source.

After a taxpayer makes a place-of-performance apportionment, it must apportion the amount of its R&D deduction remaining, if any, on the basis of relative amounts of domestic and foreign sales receipts. Subject to certain limitations, a taxpayer may elect to apportion its R&D deduction under an optional gross income method instead of the sales method. Under a gross income method, a taxpayer generally apportions its R&D deduction (after allocation under the legal requirements test but not the place-of-performance test) on the basis of relative amounts of gross income from domestic and foreign sources. The basic limitation on the use of optional gross income methods is that the respective portions of a taxpayer's R&D deduction apportioned to U.S. and foreign source income using a gross income method may not be less than 50 percent of the respective portions that would be apportioned to each such income grouping using the sales apportionment method (with the latter's exclusive place-of-performance allocation, typically 30 percent).

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[9] By its terms, this R&D allocation regulation would also apply, for example, in determining the U.S. source taxable income of a foreign person, and the taxable income effectively connected with a U.S. trade or business conducted by a foreign person, insofar as those determinations are necessary under other "operative" Code sections. The operative section for the foreign tax credit limitation is section 904(a).

Treasury Regulation secs. 1.861-8T(e)(3) and 1.861-14T(e)(2)

In 1988, Treasury issued temporary regulations regarding the allocation and apportionment of various expenses other than interest. These regulations are generally applicable to taxable years beginning after December 31, 1986 (Treas. Reg. secs. 1.861-8T(h) and 1.861-14T(a)). Section 1.861-8T(e)(3) of the temporary regulation is expected to cover R&D expenses (Treas. Reg. sec. 1.861-14T(e)(2)). To date, however, substantive R&D allocation rules under 1.861-8T(e)(3) have not been issued or proposed. When those rules are issued, they generally are to be applied (except with respect to R&D expenses allocated under the statutory rules, described below, of DEFRA) as if all members of the affiliated group are a single taxpayer (Treas. Reg. sec. 1.861-14T(e)(2)).

Legislative Background

Beginning in 1981, Congress enacted a series of statutory R&D allocation rules to substitute, in part, for the R&D allocation regulation. The first statutory R&D allocation rule was contained in the Economic Recovery Tax Act of 1981 (ERTA), covering any taxpayer's first 2 taxable years beginning within 2 years after August 13, 1981. In the taxable years governed by this aspect of ERTA, all U.S.-incurred R&D expenses were allocated to U.S. source income. This provision was extended by the Deficit Reduction Act of 1984 (DEFRA) and the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) through taxable years beginning on or before August 1, 1986.

For taxable years beginning after August 1, 1986, and on or before August 1, 1987, the Tax Reform Act of 1986 (TRA) provided that 50 percent of research expenses (other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source) were allocated to U.S. source income, with the remainder allocated and apportioned either on the basis of sales or gross income. In contrast with the R&D allocation regulation, the temporary rule of TRA (1) gave taxpayers using the gross sales method of apportionment an automatic place-of-performance allocation, for U.S.-incurred R&D, of 50 (rather than 30) percent; (2) allowed taxpayers using the gross income apportionment method to use the automatic place-of-performance rule; and (3) imposed no limit on the extent to which use of the gross income method could result in decreasing the amount of R&D expenses that would otherwise be allocated to foreign source income using the gross sales method.

The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) effectively extended statutory allocation rules for an additional four months. The rules in effect for these four months, however, were different than those contained in previous statutes. Expenses incurred during the taxable year governed by TAMRA (for any taxpayer, its first taxable year beginning after August 1, 1987) were deemed to be incurred ratably throughout the year. For expenses deemed to have been incurred in the first four months of the year (other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source), 64 percent of U.S.-incurred R&D expenses were allocated to U.S. source income, 64 percent of foreign-incurred R&D expenses were allocated to foreign source income, and the remainder of R&D expenses were allocated and apportioned either on the basis of sales or gross income, but subject to the condition that if income-based apportionment was used, the amount apportioned to foreign source income could be no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used. For expenses deemed to have been incurred during the remaining eight (or fewer) months of the year governed by TAMRA, the R&D allocation regulation applied.

The Omnibus Budget Reconciliation Act of 1989 (OBRA89) and the Omnibus Budget Reconciliation Act of 1990 (OBRA90) apply a statutory allocation rule to the taxpayer's first two taxable years beginning after August 1, 1989, and on or before August 1, 1991. In taxable years governed by OBRA89 and OBRA90, the same statutory allocation rule applies as was applicable to expenses deemed incurred in the first four months of the year governed by TAMRA. That allocation rule is codified as section 864(f) of the Internal Revenue Code.

President's Budget Proposal

Under the President's fiscal year 1992 budget proposal, the statutory R&D allocation rules of section 864(f) would be extended for one year, so as to apply to all R&D expenses paid or incurred in taxable years beginning after August 1, 1991 and on or before August 1, 1992.[10]

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[10] The Treasury Department's *General Explanations of the President's Budget Proposals Affecting Receipts* erroneously describes the effective date of the proposal as "taxable years beginning after August 1, 1991 and *ending* on or before August 1, 1992."

7. Tax credit for qualified research expenditures (sec. 41 of the Code)

Present Law

General rule

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit will not apply to amounts paid or incurred after December 31, 1991.

Eligible expenditures

Research expenditures eligible for the 20-percent incremental credit under present law consist of: (1) in-house expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf. Expenditures attributable to research which is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

A 20-percent tax credit also applies to the *excess* of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for university basic research [11] *over* (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.[12]

Research definition

The Tax Reform Act of 1986 provided statutory rules defining qualified research for purposes of the incremental credit. These rules target the credit to research undertaken to discover information that is technological in nature and that pertains to functional aspects of products. Also, the 1986 Act expressly excluded certain types of expenditures from eligibility for the credit, including post-production research activities, duplication or adaptation costs, and surveys, studies, and certain other costs.

Computation of allowable credit

General rule.—Except for certain university basic research payments, the credit applies only to the extent that the taxpayer's qualified research expenditures for the taxable year exceed its base amount. The base amount for the current year is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years.

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[11] Expenditures paid or incurred for university basic research after December 31, 1991 are not eligible for the credit.

[12] The amount of credit-eligible basic research expenditures to which the university basic research credit applies does not enter into the computation of the incremental credit. The remaining amount of credit-eligible basic research expenditures—i.e., the amount to which the university basic research credit does not apply—enters into the incremental credit computation.

Existing firms.—If a taxpayer both incurred qualified research expenses and had gross receipts during each of at least three years from 1984 to 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenses for the 1984-1988 period bears to its total gross receipts for this period (subject to a maximum ratio of .16).

Start-up companies.—If a taxpayer did not both incur qualified research expenses and have gross receipts during each of at least three years between 1984-1988, then it is assigned a fixed-base percentage of .03.

Base limitation.—In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Aggregation rules.—To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related entities, research expenditures and gross receipts of the taxpayer are aggregated with research expenditures and gross receipts of certain related persons for purposes of computing any allowable credit. A foreign affiliate's gross receipts which are not effectively connected with the conduct of a trade or business in the United States do not enter into the computation of the credit.

Changes in business ownership.—Special rules apply for computing the credit when a business changes hands, under which qualified research expenditures and gross receipts for periods prior to the change of ownership are treated as transferred with the trade or business which gave rise to those expenditures and receipts for purposes of recomputing a taxpayer's fixed-base percentage.

Trade or business limitation

To qualify for the research credit, expenses must be paid or incurred by the taxpayer in carrying on a trade or business activity. A taxpayer is treated as meeting the trade or business requirement with respect to in-house research expenditures if, at the time such in-house research expenditures are incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business of the taxpayer or certain related taxpayers.

Relation to deduction

Deductions for qualified research expenditures allowed to a taxpayer under sec. 174 or any other provision are reduced by an amount equal to 100 percent of the taxpayer's research credit determined for that year.

Legislative Background

The research credit initially was enacted in the Economic Recovery Tax Act of 1981 as a credit equal to 25 percent of the excess of qualified research expenses in the current year over the average of qualified research expenses in the prior three taxable years. The research credit was modified in the Tax Reform Act of 1986 which (1) extended the credit through December 31, 1988, (2) reduced the credit rate to 20 percent, (3) tightened the definition of research expenditures eligible for the credit, and (4) modified the university basic research credit.

The Technical and Miscellaneous Revenue Act of 1988 extended the credit for one additional year, through December 31, 1989. The 1988 Act also reduced the deduction allowed under section 174 for qualified research expenses by an amount equal to 50 percent of the research credit determined for the year.

The Omnibus Budget Reconciliation Act of 1989 effectively extended the research credit for nine months (by prorating qualified expenses incurred before January 1, 1991). The 1989 Act also (1) modified the method for calculating a taxpayer's base amount, (2) extended the availability of the credit to start-up firms which, although not presently conducting a particular trade or business, plan to use the results of their research in the active conduct of a future trade or business, and (3) further reduced the deduction allowed under section 174 for qualified research expenses by an amount equal to 100 percent of the research credit determined for the year.

The Omnibus Budget Reconciliation Act of 1990 extended the research credit through December 31, 1991 (and repealed the special rule to prorate qualified expenses incurred before January 1, 1991).

President's Budget Proposal

The President's fiscal year 1992 budget proposal would make permanent the 20-percent research tax credit for qualified research expenditures and university basic research expenditures.

8. Tax credit for low-income rental housing (sec. 42 of the Code)

Present Law

A tax credit is allowed in annual installments over 10 years for qualifying low-income rental housing, which may be newly constructed, substantially rehabilitated, or newly acquired existing residential rental property. For most newly constructed and rehabilitated housing placed in service after 1987, the credit percentages are adjusted monthly to maintain a present value for the credit of 70 percent of the total qualified expenditures. In the case of acquisition of existing housing and of newly constructed or rehabilitated housing receiving other Federal subsidies (including tax-exempt bonds), monthly adjustments are made to maintain a 30-percent present value for the credit.

A residential rental project qualifies for the low-income housing credit only if (1) 20 percent or more of the aggregate residential rental units are occupied by individuals with incomes of 50 percent or less of area median income, as adjusted for family size, or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of area median income, as adjusted for family size. Credit eligibility also depends on the existence of a 30-year extended low-income use agreement for the property. If property on which a low-income housing credit is claimed ceases to qualify as low-income rental housing or is disposed of before the end of an initial 15-year credit compliance period, a portion of the credit is recaptured. The 30-year extended use agreement creates a State law right to enforce low-income use for an additional 15 years after the initial 15-year compliance period.

In order for a building to be a qualified low-income building, the building owner generally must receive a credit allocation from the appropriate credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The low income housing credit is allocated by State or local government authorities subject to an annual ceiling for each State. The annual credit ceiling for any State is $1.25 per resident per year.

The low-income housing credit is scheduled to expire on December 31, 1991.

Legislative Background

The low-income housing credit was enacted by the Tax Reform Act of 1986, with an expiration date of December 31, 1989. The credit was substantially revised and extended through December 31, 1990, by the Omnibus Budget Reconciliation Act of 1989 (the 1989 Act). To implement the equivalent of a partial-year extension of the credit, the 1989 Act reduced the annual low-income housing credit ceiling for 1990. In years prior to 1990, the credit ceiling for each State was $1.25 multiplied by the State's population. For calendar year 1990, that amount was reduced by 25 percent from $1.25 to $0.9375.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) restored the State credit ceiling applicable for 1990 to $1.25 per resident of the State, and extended authority to allocate the credit through December 31, 1991. In addition, the 1990 Act made technical and other modifications to the credit.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the current low-income housing credit for one year, through December 31, 1992.

9. Targeted jobs tax credit (sec. 51 of the Code)

Present Law

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. The targeted groups are: (1) vocational rehabilitation referrals; (2) economically disadvantaged youths aged 18 through 22; (3) economically disadvantaged Vietnam-era veterans; (4) Supplemental Security Income (SSI) recipients; (5) general assistance recipients; (6) economically disadvantaged cooperative education students aged 16 through 19; (7) economically disadvantaged former convicts; (8) Aid to Families with Dependent Children (AFDC) recipients and Work Incentive (WIN) registrants; and (9) economically disadvantaged summer youth employees aged 16 or 17. Certification of targeted group membership is required as a condition of claiming the credit. In a certification request, the employer is required to (1) identify specifically the categories (up to 2) for which the employee is believed to be eligible, and (2) indicate that a good faith effort was made to determine that the employee is in a targeted group.

The credit generally is equal to 40 percent of up to $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200.

The credit is not available for wages paid to a targeted group member unless the individual either (1) is employed by the employer for at least 90 days (14 days in the case of economically disadvantaged summer youth employees), or (2) has completed at least 120 hours of work performed for the employer (20 hours in the case of economically disadvantaged summer youth employees). Also, the employer's deduction for wages must be reduced by the amount of the credit claimed.

The credit is available with respect to targeted-group individuals who begin work for the employer before January 1, 1992.

Authorization of appropriations

Present law authorizes appropriations for administrative and publicity expenses relating to the credit through December 31, 1991. These monies are to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

Legislative Background

Extension of credit

The targeted jobs tax credit was enacted by Congress in the Revenue Act of 1978 to replace an expiring credit for increased employment. As originally enacted, the targeted jobs tax credit was scheduled to apply to qualified wages paid before 1982.

The availability of the credit was successively extended by the Economic Recovery Tax Act of 1981 (ERTA) for one year (through 1982), by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) for two years (through 1984), and by the Deficit Reduction Act of 1984 (DEFRA) for one year (through 1985). The Tax Reform Act of 1986 (TRA 1986) extended the targeted jobs tax credit for three additional years (through 1988), with modifications. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) extended the credit for one year (through 1989), with modifications. The Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) extended the credit for nine months (through September 30, 1990). Most recently, the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) extended the credit for fifteen months (through 1991).

Modification of credit

ERTA, TEFRA, and DEFRA modified the targeted group definitions and made several technical and administrative changes in the credit provisions.

TRA 1986 limited the credit in three respects: (1) a 25-percent credit for qualified wages paid in the second year of a targeted-group individual's employment was repealed; (2) a 50-percent credit for qualified first year wages generally was reduced to a 40-percent credit (except that the credit allowed for economically disadvantaged summer youth employees was retained at 85 percent of up to $3000 in qualified first year wages); and (3) a provision was adopted under which no wages paid to a targeted-group member are taken into account for credit purposes unless the individual either (a) is employed by the employer for at least 90 days (14 days in the case of economically disadvantaged summer youth employees); or (b) has completed at least 120 hours of work for the employer (20 hours in the case of economically disadvantaged summer youth employees). Under TRA 1986, the modified credit is available for wages paid to targeted-group individuals who begin work after December 31, 1985.

The Omnibus Budget Reconciliation Act of 1987 provided that the credit would not be available for wages paid to a targeted-group individual who performs the same or substantially similar services as an employee participating in, or affected by, a strike or lockout.

Two modifications were made to the credit in TAMRA: (1) the category of economically disadvantaged youth was restricted to include employees aged 18 to 22 rather than 18 to 24; and (2) the credit percentage for economically disadvantaged summer youth employees was reduced from 85 percent to 40 percent.

OBRA 1989 further modified the certification process for the credit, requiring that employers making a certification request: (1) to identify the specific targeted groups (up to two) of which the employee is believed to be a member, and (2) indicate that a good faith effort was made to determine that the employee was a member of such targeted group(s).

Authorization of appropriations

TEFRA authorized appropriations for the expenses of administering the system, for certifying target group membership, and for providing publicity to employers regarding the targeted jobs tax credit. DEFRA, TRA 1986, TAMRA, OBRA 1989, and OBRA 1990 successively extended the authorization for appropriations for administrative and publicity expenses with the extension of the credit.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the credit for one year. Therefore, the credit would be available for workers who begin work for the employer before January 1, 1993.

10. Business energy tax credits for solar and geothermal property (sec. 48(a) of the Code)

Present Law

Under present law, nonrefundable business energy tax credits are allowed for 10 percent of the cost of certain qualified solar and geothermal energy property (Code sec. 48(a)). Solar energy property that qualifies for the credit includes any equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat. Qualifying geothermal property includes equipment which produces, distributes, or uses energy derived from a geothermal deposit, but, in the case of electricity generated by geothermal power, only up to (but not including) the electrical transmission stage.[13]

The business energy tax credits are currently scheduled to expire with respect to property placed in service after December 31, 1991.

The business energy tax credits are included in the general business credit (Code sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. An unused general business credit generally may be carried back 3 years and carried forward 15 years.

Legislative Background

Ten-percent tax credits for qualifying solar and geothermal energy properties were enacted in the Energy Tax Act of 1978, effective after April 20, 1977, through December 31, 1982. In the Windfall Profit Tax Act of 1980, the solar and geothermal credits were extended through 1985, and the rates of these credits were increased to 15 percent. In the Tax Reform Act of 1986, the solar and geothermal credits were extended for three additional years (through 1988), at rates which phased down to 10 percent. An additional one-year extension (through 1989) of the solar and geothermal credits was provided in the Technical and Miscellaneous Revenue Act of 1988.

The business energy tax credits for solar and geothermal property were extended for the nine-month period through September 30, 1990, in the Omnibus Budget Reconciliation Act of 1989. In the Omnibus Budget Reconciliation Act of 1990, the solar and geothermal credits were extended for fifteen months through December 31, 1991.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the 10-percent business credits for solar and geothermal property for one year, through December 31, 1992.

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[13] For purposes of the credit, a geothermal deposit is defined as a domestic geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor, whether or not under pressure (Code sec. 613(e)(2)).

11. Tax credit for orphan clinical drug testing expenses (sec. 28 of the Code)

Present Law

A 50-percent nonrefundable tax credit is allowed for a taxpayer's qualified clinical testing expenses paid or incurred in the testing of certain drugs, generally referred to as orphan drugs, for rare diseases or conditions. Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. Present law defines a rare disease or condition as one that (1) affects less than 200,000 persons in the U.S. or (2) affects more than 200,000 persons, but there is no reasonable expectation that businesses could recoup the costs of developing a drug for it from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

Legislative Background

This provision was enacted initially in the Orphan Drug Act of 1983, and was scheduled to expire after 1987. The credit was extended for three years in the Tax Reform Act of 1986, through December 31, 1990. The Omnibus Budget Reconciliation Act of 1990 extended the credit for one year, through December 31, 1991.

12. Minimum tax exception for gifts of appreciated tangible property (sec. 57(a)(6) of the Code)

Present Law

In computing taxable income, a taxpayer generally is allowed to deduct the fair market value of property contributed to a charitable organization.[14] In the case of a charitable contribution of tangible personal property, however, a taxpayer's deduction for regular tax purposes is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), section 57(a)(6) provides that the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis. However, a special rule provides that, in the case of any taxable year beginning in 1991, section 57(a)(6) does not apply to charitable contributions of tangible personal property.

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[14] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)). Special rules also limit the amount of a charitable contribution deduction to less than the contributed property's fair market value in cases of contributions of inventory or other ordinary income property and short-term capital gain property.

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Legislative Background

The Tax Reform Act of 1986 added the rule that, for purposes of computing AMTI, treats as a preference item the amount of appreciation with respect to a charitable contribution of capital gain property.

The Omnibus Budget Reconciliation Act of 1990 provided the rule that, in the case of any taxable year beginning in 1991, the amount of appreciation with respect to a charitable contribution of tangible personal property is not treated as a preference item when computing AMTI.

B. 1992 Expiring Tax Provisions

1. Access to tax information by the Department of Veterans Affairs (sec. 6103 of the Code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain enumerated instances (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

Among the disclosures permitted under the Code is disclosure of certain third-party and self-employment tax information to the Department of Veterans Affairs (DVA) to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs (sec. 6103(l)(7)(D)(viii)). The income tax returns filed by the veterans themselves are not disclosed to DVA.

The DVA disclosure provision expires after September 30, 1992. The U.S. General Accounting Office (GAO) is required to submit a detailed report on the effects of this provision by January 1, 1992.

Legislative Background

The DVA disclosure provision was added by section 8051 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508).

2. Placed-in-service date for nonconventional fuels production credit (sec. 29 of the Code)

Present Law

Nonconventional fuels are eligible for a production credit that is equal to $3 per barrel or BTU oil barrel equivalent (adjusted for inflation). Qualified fuels must be produced domestically from a well drilled, or a facility placed in service, before January 1, 1993. The production credit is available for qualified fuels sold before January 1, 2003.

Qualified fuels include (1) oil produced from shale and tar sands, (2) gas produced from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass, and (3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Legislative Background

The nonconventional fuels production credit was originally enacted in the Windfall Profit Tax Act of 1980, with a requirement that the property generally be placed in service before January 1, 1990.

In the Technical and Miscellaneous Revenue Act of 1988, the placed-in-service date was extended from January 1, 1990, to January 1, 1991.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) extended the placed-in-service date for two years to January 1, 1993. Additionally, the 1990 Act extended the production credit sunset date so that sales of qualifying fuels occurring on or before December 31, 2002 would be eligible for the credit.

The 1990 Act reinstated gas produced from certain tight formations as qualifying for the section 29 credit, and repealed the requirement that the price of such gas be regulated.

3. Excise tax on certain vaccines for the Vaccine Injury Trust Fund (secs. 4131 and 9150 of the Code)

Present Law

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of compensation for individuals who die or who are injured as a result of the administration of certain vaccines: diptheria, pertussis, and tetanus (DPT); diptheria and tetanus (DT); measles, mumps, and rubella (MMR); and polio. The compensation program is to apply only to injuries from vaccines administered after September 30, 1988 and prior to October 1, 1992.

The Vaccine Trust Fund is funded by an excise tax on DPT, DT, MMR, and polio vaccines (and any other vaccines used to prevent these diseases). The excise tax per dose is $4.56 for DPT, $0.06 for DT, $4.44 for MMR, and $0.29 for polio vaccines.

The vaccine excise tax will expire after the later of: (1) December 31, 1992; or (2) the date on which the Vaccine Trust Fund revenues exceed the projected liabilities with respect to compensable injuries from vaccines administered before October 1, 1992.

Legislative Background

The vaccine excise tax was enacted in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), with the excise tax imposed on sales of covered vaccines on or after January 1, 1988.

APPENDIX IX:

ESTIMATED REVENUE EFFECTS OF EXTENDING EXPIRING TAX PROVISIONS PERMANENTLY

Fiscal Years 1992–1996

[Billions of Dollars]

Provision	1992	1993	1994	1995	1996	1992–96
A. 1991 Expiring Tax Provisions						
1. Employer-provided educational assistance (sec. 127)	−0.3	−0.3	−0.4	−0.4	−0.4	−1.8
2. Group legal services (secs. 120, 501(c)(20))	−0.1	−0.1	−0.1	−0.1	−0.1	−0.6
3. Health insurance deduction for self-employed (sec. 162(l))	−0.3	−0.4	−0.5	−0.5	−0.6	−2.3
4. Mortgage revenue bonds and mortgage credit certificates (secs. 143, 25)	(1)	−0.1	−0.1	−0.2	−0.3	−0.8
5. Qualified small-issue manufacturing bonds (sec. 144(a))	(1)	−0.1	−0.1	−0.2	−0.3	−0.6
6. Foreign allocation of R&D (secs. 861(b), 862(b), 863(b), 864(f))	−0.4	−0.8	−0.8	−0.9	−1.0	−3.9
7. Research and experimentation tax credit (sec. 41)	−0.5	−1.0	−1.3	−1.6	−1.8	−6.2
8. Low-income housing tax credit (sec. 42)	−0.1	−0.3	−0.6	−1.0	−1.2	−3.3
9. Targeted jobs tax credit (sec. 51)	−0.1	−0.2	−0.3	−0.4	−0.5	−1.5
10. Business energy tax credits for solar and geothermal property (sec. 48(a))	(1)	(1)	(1)	(1)	(1)	−0.2
11. Orphan drug tax credit (sec. 28)	(2)	(2)	(2)	(2)	(2)	(1)
12. Minimum tax exception for gifts of appreciated tangible property (sec. 57)	(2)	(1)	(1)	(1)	(1)	−0.1

--- Provision	1992	1993	1994	1995	1996	1992-96
B. 1992 Expiring Tax Provisions						
1. Access to tax information by the Dept. of Veterans Affairs (sec. 6103)	(³)	(³)	(³)	(³)	(³)	(³)
2. Placed-in-service date for nonconventional fuels production credit (sec. 29)	......	−0.1	−0.3	−0.6	−0.9	−1.9
3. Excise tax on certain vaccines for the Vaccine Injury Compensation Fund (sec. 4131)	......	0.1	0.1	0.1	0.1	0.5
Grand Totals	−1.8	−3.4	−4.6	−5.9	−7.1	−22.7

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[1] Loss of less than $50 million.

[2] Loss of less than $10 million.

[3] This provision does not affect Federal tax receipts, but does result in a decrease in budget outlays. Because the budget effect associated with this provision was not credited to the tax-writing committees in the Omnibus Budget Reconciliation Act of 1990, it is not shown in this table.

Source: Joint Committee on Taxation.

PART IX. FREQUENTLY ASKED QUESTIONS CONCERNING THE FEDERAL INCOME TAX

[CRS Report for Congress, 89–623 A, November 17, 1989]

SUMMARY

This report addresses some of the frequently asked historical, constitutional, procedural, and legal questions concerning the Federal income tax.

The constitutional questions include a discussion of: Congress's taxing power; the difference between a direct and an indirect tax; Fifth Amendment protection against self-incrimination and tax returns; Fourth Amendment protection against unreasonable searches and seizures and tax collection practices; Thirteenth Amendment protections against involuntary servitude and tax withholding; Equal Protection and Due Process questions; and the legality of the ratification of the Sixteenth Amendment.

Other questions addressed include: whether title 26 of the United States Code is positive law; the taxability of wages; the voluntary or involuntary nature of the income tax; what is meant by the income tax "being in the nature of an excise tax;" when was the Internal Revenue Service established; what is the "Liberty Amendment;" the use of the revenues raised through the Federal tax on telephone usage; taxation without representation; the repeal of the original withholding act; and the frivolous tax return penalty.

This report is an update and revision of CRS Report by Howard Zaritsky entitled *Some Constitutional Questions Regarding The Federal Income Tax Laws*: issued as report 79-131, dated May 25, 1979; updated by Mr. Zaritsky as report 80-19, January 17, 1980; and updated again by John R. Luckey as report 84-168, September 26, 1984.

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FREQUENTLY ASKED QUESTIONS CONCERNING THE FEDERAL INCOME TAX

1. WHAT SPECIFIC LIMITATIONS ON THE POWER OF CONGRESS TO TAX ARE FOUND IN THE CONSTITUTION?

There is only one express exception to Federal taxing power found in the United States Constitution. Article I, Section 9 provides "No tax or duty shall be laid on articles exported from any State."

The Constitution divides all taxes into two classifications; direct taxes and indirect taxes. Direct taxes must be levied according to the rule of apportionment and indirect taxes must be levied according to the rule of uniformity.

It is important to note and emphasize that these are classifications for purposes of how taxes may be levied, *not* denials of taxing power. The Federal government may enact direct taxes, but if it does so, they must be apportioned among the States.

The classification of direct taxes and the rule of apportionment are set forth in Article I, Section 9, Clause 4 of the Constitution, which states:

> No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken.

There are two types of direct taxes that therefore have to be apportioned: taxes on property (real or personal) and "Capitation" taxes (head taxes). Congress has in the past levied taxes on property. In 1813, Congress levied a direct tax on property totalling three million dollars, which the statute apportioned among the eighteen states and then among the counties (parishes) of each State.[1] Thus, for example, $369,018.44 was apportioned to Virginia and $6,354.50 of that amount apportioned to Fairfax County. Provisions for assessing and collecting the tax were contained in the Act of July 22, 1813.[2] A direct tax on property totalling $20 million was levied in

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[1] Act of August 2, 1813, 2 Stat. 53.

[2] 3 Stat. 22 (1813).

1861, apportioned among the States, territories, and the District of Columbia.[3] Congress has never enacted a "head tax".

The classification of indirect taxes and the rule of uniformity are set forth in Article I, Section 9, Clause 1 of the Constitution, which states:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

All taxes which are not direct are indirect and subject to the rule of uniformity. The rule of uniformity requires that an indirect tax not discriminate geographically.[4] For example, it would violate the rule of uniformity to enact a special income tax rate for residents of the State of Texas; however, it does not violate the rule to have a special income tax rate for individuals who make over $50,000 per year.

2. IS THE FEDERAL INCOME TAX A DIRECT OR INDIRECT TAX?

The most direct answer to this question is that, since the ratification of the Sixteenth Amendment, it makes no practical difference which classification one gives to the income tax. As stated above, the only distinction between a direct tax and an indirect tax is that the direct tax must be apportioned. As discussed below, the Sixteenth Amendment, without classifying the income tax, empowers Congress to lay and collect taxes on incomes, from whatever source, without apportionment.

Prior to the ratification of the Sixteenth Amendment, the question of classification of the income tax was central to the determination as to its constitutionality. In *Pollock* v. *Farmers' Loan and Trust Company*,[5] the Supreme Court struck down the Income Tax Act of 1894.[6] The 1894 Act imposed a Federal income tax on:

> the gains, profits, and income received in the preceding calendar year by every citizen of the United States...whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or

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[3] Act of August 5, 1861, § 8, 12 Stat. 295.

[4] *United States* v. *Ptasynski*, 462 U.S. 74 (1983).

[5] 157 U.S. 429 (1895), *rehearing* 158 U.S. 601 (1895).

[6] 28 Stat. 509 (1894).

> salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere....

After extensive examination of the history of the constitutional provisions dealing with the Federal taxing power, the Court found that the Constitution had sought to avoid the levy of a burdening tax on accumulations of property, real or personal, except as subject to the "regulation of apportionment."[7] The Court concluded that a tax imposed on the rents or income of real estate was not significantly distinct from a tax on the property itself and was, therefore, a direct tax within the meaning of the Constitution.[8]

The *Pollock* Court did not, however, hold that all income taxes were direct taxes. Rather, it held that although income taxes are generally indirect taxes in the nature of excises (subject only to the rule of uniformity), income taxes on the gains derived from investments in real or personal property had so substantial an impact on the underlying assets that they should be viewed as direct taxes falling on the property. In this respect, the 1894 tax would have been valid to the extent that it was imposed on "gains, profits, or income...derived from... salaries, or from any profession, trade, employment, or vocation..."[9] Nonetheless, on rehearing *Pollock*, the Court struck down the entire 1894 Act because it believed that to void only the tax on income derived from investments in real and personal property and leave the tax burden solely upon wages and other forms of compensation income would be contrary to the congressional intent.[10]

Some uncertainty followed in the years after *Pollock*. The Court held repeatedly that various taxes imposed by the Congress were indirect in nature and could be levied without regard to the rule of apportionment.[11]

The Sixteenth Amendment to the United States Constitution was ratified in 1913, and provides that:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without

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[7] 157 U.S. at 581.

[8] *Id.* at 583.

[9] 28 Stat. 509.

[10] 158 U.S. at 637.

[11] *See*, *Nicol* v. *Ames*, 173 U.S. 509 (1899) (tax on certain sales and exchanges of property); *Knowlton* v. *Moore*, 178 U.S 41 (1900) (estate tax); and *Patton* v. *Brady*, 184 U.S. 609 (1902) (tax on manufactured tobacco); *Flint* v. *Stone Tracy Co.*, 220 U.S. 108 (1911) (tax on corporate franchise).

> apportionment among the several States, and without regard to any census or enumeration.

The Congress immediately took advantage of this perceived clarification of its power and enacted another Federal income tax substantially similar to the 1894 tax.[12] The 1913 tax was imposed on:

> gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devises or descent.

In 1916, the Supreme Court examined the new income tax in light of the Sixteenth Amendment and the other constitutional provisions discussed above and found that it was constitutional in its entirety. The review of the 1913 income tax came in *Brushaber* v. *Union Pacific Railroad Company*,[13] in which a stockholder of the Union Pacific Railroad Company sought to enjoin the corporation from paying the recently-imposed income tax on the grounds that the tax was unconstitutional. The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment and indirect taxes were still subject to the rule of uniformity. Rather, the Court found that the Sixteenth Amendment sought to restrain the Court from viewing an income tax as a direct tax because of its close effect on the underlying property.

The Court noted that the inherent character of an income tax was that of an indirect tax, stating:

> Moreover in addition the conclusion reached in the *Pollock Case* did not in any degree involve the holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in the nature an excise

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[12] 38 Stat. 166.

[13] 240 U.S. 1 (1916).

> entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxes was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it.[14]

The language of the Sixteenth Amendment, the Court found in *Brushaber*, was solely intended to eliminate:

> the principle upon which the *Pollock Case* was decided, that is, of determining whether a tax on income was direct not by a consideration of the burden placed on the taxed income upon which it directly operated, but by taking into view the burden which resulted on the property from which the income was derived since in express terms the Amendment provides that income taxes, from whatever source derived, shall not be subject to the regulation of apportionment.[15]

3. WHAT DOES THE COURT MEAN WHEN IT STATES THAT THE INCOME TAX IS IN THE NATURE OF AN EXCISE TAX?

An excise tax is a tax levied on the manufacture, sale, or consumption of a commodity or any of various taxes on privileges often assessed in the form of a license or fee. In other words, it is a tax on doing something to property or on the privilege of holding some property or doing some act, not a tax on the property itself. A sales tax is a clear example of an excise tax. The tax is not on the property directly, but rather it is a tax on the transaction.

When a court refers to an income tax as being in the nature of an excise, it is merely stating that the tax is not on the property itself, but rather it is a fee for the privilege of receiving gain from the property. The tax is based upon the amount of the gain, not on the value of the property.

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[14] *Id.* at 16-17.

[15] *Id.* at 18.

4. WAS THE SIXTEENTH AMENDMENT PROPERLY RATIFIED?

A. Did the President sign the resolution which became the Sixteenth Amendment?

President Taft did not sign the resolution which became the Sixteenth Amendment to the Constitution of the United States.

The Supreme Court ruled in 1798 that resolutions of Congress proposing amendments to the Constitution need not be submitted to the President.[16] Therefore, the failure of President Taft to sign the proposed amendment has no effect upon the constitutionality or legality of the Sixteenth Amendment.

B. Do clerical errors in the ratifying resolutions of the various state legislatures negate the ratification of the Sixteenth Amendment?

The Sixteenth Amendment became part of the Constitution of the United States in 1913 when certified by the Secretary of State, Philander C. Knox.[17] Recently it has been alleged by several defendants in tax litigation that the Sixteenth Amendment is not properly part of the Constitution because it was improperly ratified by a number of states, in that the ratification resolutions of these states contained variations from the resolution enacted by Congress in punctuation, capitalization, and/or spelling.

Secretary Knox certified adoption of the amendment pursuant to Section 205 of the Revised Statutes of the United States which provided:

> Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the Unites States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to intents and purposes, as part of the Constitution of the United States.[18]

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[16] *Hollingsworth* v. *Virginia*, 3 U.S. 378 (1798). This case involved the Bill of Rights, which had been referred to the States without having been presented to President Washington.

[17] 38 Stat. 785 (1913).

[18] Act of April 20, 1818, ch. 80, § 2, Rev. Stat. § 205 (2d ed. 1878)(amended version codified at 5 U.S.C. § 160 (1940))(repealed Oct. 31, 1951); current version, as amended, at 1 U.S.C. § 106b.

The Supreme Court has held that certification under this statute is conclusive upon the courts.[19] *Leser* v. *Garnett* involved a challenge to the ratification of the Nineteenth Amendment. The Secretary of State had certified its adoption. It was contended, however, that the ratifying resolutions of Tennessee and West Virginia were inoperative because the resolutions of those states had been adopted in violation of their rules of legislative procedure. In answer to this contention the Court held:

> The proclamation by the Secretary certified that from official documents on file in the Department of State it appeared that the proposed Amendment was ratified by the legislatures of thirty-six States, and that it "has become valid to all intents and purposes as a part of the Constitution of the United States." As the legislatures of Tennessee and of West Virginia had power to adopt the resolutions of ratification, official notice to the Secretary, duly authenticated, that they had done so was conclusive upon him, and, being certified by his proclamation, is conclusive upon the courts.[20]

In support of this conclusion the Court relied upon the reasoning of *Field* v. *Clark*.[21] In that case the Court held that an enrolled bill was conclusive evidence of statutory enactment. The Court noted that such a bill is signed by the Speaker and the President of the Senate, an attestation that it passed Congress as signed, and when the President signs, it also indicates his attestation that the measure was properly passed by Congress. "The respect due to coequal and independent departments requires the judicial department to act upon the assurance, to accept, as having passed Congress, all bills authenticated in the stated manner."[22] The Court, in *Leser*, felt the same respect must be given the certification by the Secretary of State.[23]

More recently, in *Baker* v. *Carr*,[24] the Supreme Court set out a list of formulations which may identify the existence of a political question in a given case:

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[19] *Leser* v. *Garnett*, 258 U.S. 130 (1922).

[20] *Id*. at 137.

[21] 143 U.S. 649 (1892).

[22] *Id*. at 672.

[23] *Leser* v. *Garnett*, 258 U.S. 130, 137 (1922).

[24] 369 U.S. 186 (1962).

> It is apparent that several formulations which vary slightly according to the setting in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[25]

Courts of Appeals in several circuits have, within the last few years, considered the question of the ratification of the Sixteenth Amendment and its certification by Secretary Knox. Applying the precedent, discussed above, these Courts have uniformly rejected these challenges, holding that correctness of the Secretary's certification is a political question and therefore his certification is conclusive upon the courts.[26]

5. DO TAXPAYERS HAVE THE RIGHT, UNDER THE FIFTH AMENDMENT, NOT TO ANSWER QUESTIONS ON THEIR TAX RETURNS?

Yes, taxpayers do have protection of the Fifth Amendment when filing their tax returns. However, this has never been interpreted to permit a blanket refusal to give any information on the return.

The Fifth Amendment states:

> No person...shall be compelled in any criminal case to be a witness against himself.

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[25] *Id.* at 217.

[26] *See*, *Untied States* v. *Stahl*, 792 F.2d 1438 (9th Cir.), *cert. den.*, 107 S.Ct. 888 (1986), *United States*, v. *Ferguson*, 793 F.2d 828 (7th Cir.), *cert. den.*, 107 S.Ct. 406 (1986), *United States* v. *Foster*, 789 F.2d 457 (7th Cir.), *cert. den.*, 107 S.Ct. 273 (1986), *Stubbs* v. *Commr.*, 797 F.2d 936 (11th Cir. 1986), and *Sisk* v. *Commr.*, 791 F.2d 58 (6th Cir. 1986).

The Supreme Court has held that the privilege against self-incrimination, though founded in the Constitution itself, does not free a taxpayer from the obligation to file an income tax return.[27] An individual may, however, refuse to provide a specific item of information if that information would tend to incriminate the individual. For instance, while the amount of income a person received in a year would not be protected, the source of the income might be incriminating and therefore the privilege could be invoked.[28]

The Court has set out the appropriate procedures to be followed by a taxpayer who wishes to assert the privilege against self-incrimination with respect to an item which should otherwise be reported on an individual's tax return. The taxpayer should assert the privilege on the return, submitting all other information. If the Internal Revenue Service brings criminal charges against the taxpayer for failure to file a complete return, the taxpayer may raise the privilege against self-incrimination in defense. The judge would then determine whether or not the privilege was justified and, if it was justified, the criminal charges would not be permitted to stand. However, the IRS may recompute the income tax of a taxpayer who refuses to provide requested data. If the IRS determines from its own investigation that a taxpayer owes additional taxes, it may assess a deficiency. In this case, the taxpayer has the burden to establish the correct liability. Absent evidence supplied by the taxpayer, the assessment by the IRS will be presumed accurate.[29] In this respect, the taxpayer may assert the privilege against self-incrimination to prevent being compelled to give certain information, but one result may be a liability for additional income taxes.

6. IS TITLE 26 OF THE UNITED STATES CODE (INTERNAL REVENUE) LAW?

This question stems from the fact that some titles of the United States Code (U.S.C.) have been enacted into what is called "positive law" and others have not. Title 26, Internal Revenue, has not been enacted into positive law.

The U.S.C. is divided into fifty titles. Of these fifty titles, twenty and part of another have been enacted into positive law. If a title has been so enacted, the text of that title constitutes legal evidence of the laws in that title. If the title has not been so enacted, the title is only prima facie evidence of the actual law. The courts could require proof of the statutes underlying the title, which are the positive law when the title has not been enacted into positive law.

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[27] *United States* v. *Sullivan*, 274 U.S. 259 (1926).

[28] *Garner* v. *United States*, 424 U.S. 628 (1976).

[29] *Id.*

The Office of Law Revision Counsel, which has the responsibility for preparing titles for enactment into positive law, states that titles are chosen for enactment into positive law on two bases. Some are chosen because of congressional mandate that the laws be codified. Otherwise, the Office of Law Revision Counsel prefers to select titles which cover areas of minimal legislative activity. The tax laws do not meet either one of these criteria.

The underlying statute, and in the case of the tax laws the positive law, for the tax code is the Internal Revenue Code of 1986[30] as amended. Title 26 of the U.S.C. is an editorial codification of this act prepared and published under the supervision of the House Judiciary Committee, pursuant to statute.[31] The courts, in short, have the discretion to recognize the IRC as the applicable law, or require proof of the underlying statute.[32]

7. ARE WAGES TAXABLE AS INCOME?

Yes, wages are taxable as income. The question is usually based on one of two arguments, historical or definitional.

The historical argument derives from the congressional debates on the Sixteenth Amendment in 1909. Most of the debate centered on the taxing of income from capital assets and the taxing of corporations. The proponents of the position that wages are not taxable income claim that the Sixteenth Amendment was therefore only intended to allow taxation of income from capital.

The fallacy of this argument is that taxation of wages had never been found unconstitutional and therefore an amendment to the Constitution was not necessary to permit this type of taxation. The Sixteenth Amendment was enacted in response to the Supreme Court decision in *Pollock* v. *Farmers' Loan and Trust Company,*[33] in which the Income Tax Act of 1894[34] was struck down. The 1894 Act imposed a Federal income tax on:

> the gains, profits, and income received in the preceding calendar year by every citizen of the United States...whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or

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[30] Pub. L. 99-514, 100 Stat. 2085, 99th Cong., 2nd Sess. (1986).

[31] *See*, 1 U.S.C. § 202.

[32] *Young* v. *IRS*, 596 F.2d 141 at 149 (N.D. Ind. 1984).

[33] 157 U.S. 429 (1895), *rehearing* 158 U.S. 601 (1895).

[34] 28 Stat. 509 (1894).

> salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere....

The Court, in *Pollock*, found that the Constitution had sought to avoid the levy of a burdening tax on accumulations of property, real or personal, except as subject to the "regulation of apportionment."[35] The Court concluded that a tax imposed on the rents or income of real estate was not significantly distinct from a tax on the property itself and was, therefore, a direct tax within the meaning of the United States Constitution.[36]

The *Pollock* Court did not, however, hold that all income taxes were direct taxes. Rather, it held that although income taxes are generally indirect taxes in the nature of excises (subject only to the rule of uniformity), income taxes on the gains derived from investments in real or personal property had so substantial an impact on the underlying assets that they should be viewed as direct taxes falling on the property. In this respect, the 1894 tax would have been valid to the extent that it was imposed on "gains, profits, or income...derived from... salaries, or from any profession, trade, employment, or vocation..."[37] Nonetheless, on rehearing *Pollock*, the Court struck down the entire 1894 Act because it believed that to void only the tax on income derived from investments in real and personal property and leave the tax burden solely upon wages and other forms of compensation income would be contrary to the congressional intent.[38] Therefore, since only the taxation of income derived from capital had been found to be unconstitutional unless apportioned, the debate on the Sixteenth Amendment centered on the taxation of this type of income.

The definitional argument concerning the taxation of wages is based on the contention that labor worth a certain amount is exchanged for money worth the same amount and therefore there is no income to be taxed. This argument fails from lack of understanding of the concept of taxable income. There are three basic requirements which must be satisfied before income is considered taxable income. The requirements are gain, realization, and recognition.

The Sixteenth Amendment clarified the power of Congress to lay and collect taxes on income, from whatever source derived.[39] Income has been defined as gain derived from capital, from labor, or from both combined.[40] The operative word in this definition is gain. Gain, in the tax context, is the surplus when the basis of an item (in many cases, and in the following, basis is synonymous with cost) is subtracted from the item's fair market value. For example: John Doe purchases a piece of real estate with a fair market value of $5,000 for a cost of $5,000. One year later the property has appreciated in value to a fair market value of $6,000. Mr Doe has a gain of $1,000 (current fair market value, $6,000 minus $5,000 basis).

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[35] 157 U.S. at 581.

[36] *Id.* at 583.

[37] 28 Stat. 509.

[38] 158 U.S. at 637.

[39] *Brushaber* v. *Union Pacific Railroad Co.*, 240 U.S. 1 (1916).

The gain in the example above is not a taxable gain though, because it has not been realized. The Supreme Court has ruled that income is not taxable income until it has been realized, i.e. received or the right to receive has been established.[41] Therefore if Mr. Doe sold his property for $6,000 he would realize his gain of $1,000.[42]

The next question which must be answered is whether Congress has determined that this type of gain should be taxed. In other words, should this gain be recognized. Congress has determined, by enacting Internal Revenue Code (IRC) section 61(a), that every type of gain should be taxed unless it has been specifically excluded in some other part of the tax code. Section 61(a) provides:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived....

The " except as otherwise provided" clause anticipates specific nonrecognition provisions. A good example of a nonrecognition provision is IRC § 103 which excludes the interest from certain state and local bonds from gross income. Interest on these bonds is gain and when paid, or constructively received, it is realized, but Congress has specifically decided not to recognize it.

There are nonrecognition provisions which could affect the transaction in the above example. For instance, if the property was Mr. Doe's principal residence and he sold it and within two years bought another principal residence of comparable value, his gain would not be currently recognized under IRC § 1034.

Wages to be taxable must pass the same type of examination. For example, if John Doe works 5 hours for $5.00 per hour, is the $25.00 he receives taxable income to him? As we have seen in the above analysis, we must determine if there has been a gain which is realized and recognized.

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[40] *Eisner* v. *Macomber*, 252 U.S. 189 (1920).

[41] *Id.*

[42] It should be noted that Mr. Doe does not have to receive money for the property for there to be a realization of his gain. As long as the total value of money, property, and money's worth he receives is greater than his basis, he has realized a gain.

To see if there was a gain we do not look only to the fair market value of the labor, but rather we determine the difference between the fair market value and his basis (cost) in the labor. Generally one has a zero basis in one's own labor. Therefore, Doe's gain is $25.00 minus 0, or $25.00. This gain is realized when Doe is paid or has right to receive payment.

The gain is recognized specifically in IRC § 61(a)(1) (compensation for services) and there is no nonrecognition section which is generally applicable to wages. Therefore, John Doe has $25.00 of taxable income.

8. DO WE HAVE A VOLUNTARY TAX SYSTEM?

We do not have a voluntary tax system in the sense that payment of taxes is optional. There are specific provisions of law which require the payment of income taxes. There are civil and criminal penalties for failing to pay these taxes or file the required returns. Several rather tenuous arguments have been put forward to support the contention that paying income tax is optional.

First, statements by many, including some by past IRS Commissioners, have been taken out of context to support this position. The phrase "voluntary tax system" is commonly used in discussion of our tax compliance system. The United States does have a system of collecting taxes that depends to a certain extent upon voluntary compliance. Although this country does have withholding on certain types of income, much of the income tax revenues come from tax on other sources of income (such as interest, dividends, self-employment, etc.) where the individual must supply the information for the system to function efficiently. Supplying this information is not voluntary in the meaning of optional. However, if a large percentage of the citizenry did not report their income, our system of collection would not work efficiently, leading to the often misunderstood statement that we rely upon voluntary compliance in our tax system.

Another argument which purports to support the optional nature of our tax system is based upon the Privacy Act notice contained in the IRS 1040 Form. The Privacy Act of 1974[43] requires, among other things, that each agency soliciting information from the public state the authority which authorizes the solicitation, whether the disclosure requested on the form is mandatory or voluntary, and the effect of not providing the information. The Privacy Act notice in the IRS 1040 Form instruction booklet does not use the word mandatory. Therefore, the argument is put forth that filing the return is voluntary.

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[43] Pub. L. No. 93-579, 88 Stat. 1896, 93rd Cong., 2nd Sess. (1974).

The Privacy Act notice in the IRS 1040 Form instruction booklet states that the authority to seek the information is found in IRC § 6001 and 6011 and their regulations; that one must file a return, show a Social Security Number, and fill in all parts of the form that apply; and that a criminal or civil penalty may result from failure to do so. The Federal courts have specifically found that use of the word "mandatory" is not required and that the notice in the 1040 Form meets the requirements of the Privacy Act.[44]

Another semantic argument put forth in this area revolves around the use of the word "liable" in tax acts. The contention is made that the income tax statute does not use the magic words "individual is made liable" and therefore an individual is not liable for income taxes. The Federal courts have not had much time for this argument, characterizing it as "arrogant sophistry"[45] and "blatant nonsense."[46] The first description is perhaps the most apt. The proponent of this argument has set up a standard that all taxes must meet. The income tax does not meet this standard. He, therefore, concludes there is something wrong with the income tax. The problem is not in the income tax, but in the standard. There is no requirement in fact or law that a tax act must use the proponent's magic words.

The Federal income tax is imposed, in IRC § 1, on the taxable income of every individual. Taxable income is defined in IRC § 63. Every individual whose gross income exceeds specified amounts is required to file an income tax return under IRC § 6012. Gross income is defined in IRC § 61. When a return is required by the IRC, the person required to make such return is required, without assessment or notice and demand of the Secretary, to pay such tax to the internal revenue officer with whom the return is filed under IRC § 6151. These sections, working together, make an individual liable for income taxes.

9. DO THE INTERNAL REVENUE SERVICE'S COLLECTION AND AUDITING PROCEDURES VIOLATE THE FOURTH AMENDMENT?

The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

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[44] *See*, for example, *United States* v. *Wilber*, 696 F.2d 79 (8th Cir., 1982).

[45] *See*, *Donelin* v. *Commr.*, T.C. Memo. 1984-131, and *Schiff* v. *Commr.*, T.C. Memo. 1884-223.

[46] *See*, *Newman* v. *Schiff*, 778 F.2d 460 (8th Cir. 1985).

> affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The present procedures followed by the IRS in assessment of income tax deficiencies and the collection of unpaid taxes have generally been sustained by the courts as valid and as not violative of the Fourth Amendment.

The income tax law requires all taxpayers to maintain such records as are deemed by the Treasury Department, through the IRS, to be necessary for the determination of the taxpayer's liability.[47] Furthermore, the IRS is authorized by statute to inspect such records and to demand their presentation in order to determine whether a return is correct and whether a return has been filed.[48] This summons may be enforced by the IRS by means of an action brought in the United States District Court.[49]

The Supreme Court has held that the use of an administrative summons to obtain a taxpayer's records is not a violation of the Fourth Amendment right to be free from unreasonable searches and seizures.[50] However, the IRS must issue such a summons in "good faith," for use in determining the taxpayer's civil liability for income taxes, rather than the taxpayer's criminal liabilities.[51]

The IRS follows a set pattern of procedures for assessing a deficiency in income taxes and collecting those assessed taxes. If a taxpayer is determined to have underpaid his income taxes, the IRS will issue a notice of proposed assessment, giving the taxpayer an opportunity to seek administrative review of the determination within the next thirty days. If the taxpayer fails to request administrative review, or if the review sustains the liability, a notice of deficiency is issued.[52] This notice permits the taxpayer to petition the United States Tax Court for a redetermination of the assessed deficiency without first paying the taxes allegedly due. If no petition is filed by taxpayer within the ninety days from the issuance of the notice of deficiency, the Tax Court loses jurisdiction over the case.[53] At that time, the IRS issues a demand for payment of the tax.[54] Now the taxpayer must legally pay the tax.[55] If the taxpayer fails to do so, the IRS may collect the tax through judicial proceedings or through its power of levy and distraint.

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[47] IRC § 6001.

[48] IRC § 7602

[49] IRC § 7604.

[50] *See*, *United States* v. *Bisceglia*, 420 U.S. 141 (1975).

[51] *United States* v. *Sullivan*, 274 U.S. 259 (1926).

[52] IRC § 6212.

[53] IRC § 6213.

The power of levy and distraint gives the IRS the ability to seize the assets of a taxpayer and sell them, applying the proceeds to the outstanding tax liability.[56] The Supreme Court has held that the exercise of these powers is constitutional and that such extra-judicial seizures and sales do not violate the protections of the Fourth Amendment against unreasonable search and seizures because the taxpayer will already have ample opportunity for judicial review of the deficiency.[57] The Court has referred to the power of the IRS to levy on a taxpayer's property as an "essential part of our self-assessment tax system...[which] enhances voluntary compliance in the collection of taxes.[58]

The Supreme Court has noted some constitutional limitations on the exercise of the Government's power of levy and distraint. In *G.M. Leasing* the Court held that the IRS could not make a forced entry onto the taxpayer's premises in order to seize property without a court order. However, the agents could take the taxpayer's property which was not in an inclosed area.[59]

In some limited circumstances, the IRS will levy upon the property of a taxpayer without first providing the opportunities for administrative or judicial review discussed above. The IRS is authorized by statute to dispense with these procedures and immediately seize the property if it believes that the taxpayer intends to remove or hide himself or his property in order to defeat the collection of the tax.[60] This emergency procedure is known as "jeopardy assessment" and has been sustained against a Fourth Amendment challenge by the Supreme Court.[61]

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[54] IRC § 6155.

[55] However, the taxpayer's options for judicial review are not foreclosed. IRC § 7422 provides that after the taxpayer has paid the tax in full, a suit for a refund may be brought in either the appropriate United States District Court or in the United States Claims Court.

[56] *See*, IRC § 6331 through 6345.

[57] *Phelps* v. *United States*, 431 U.S. 330 (1974).

[58] *G.M. Leasing Corp.* v. *United States*, 429 U.S. 339 (1977).

[59] *Id.*

[60] *See*, IRC § 6851 through 6864.

[61] *Laing* v. *United States*, 423 U.S. 161 (1976).

10. DO SUCH ASPECTS OF THE FEDERAL INCOME TAX AS GRADUATED RATES, DEDUCTIONS, AND EXEMPTIONS VIOLATE THE EQUAL PROTECTION GUARANTEES OF THE CONSTITUTION?

The Constitution does not contain an express prohibition against the denial by the Federal Government of a person's equal protection of the laws. The Fifth Amendment does, however, preclude the United States from depriving any person of "life, liberty, or property, without due process of law..." The Supreme Court has determined that this assurance also precludes the United States from denying persons equal protection of the laws.[62]

The prohibition against denial of equal protection of the laws, however, does not preclude Congress from creating reasonable classifications among taxpayers. The Court has stated that the Congress is to be given wide discretion in classifying taxpayers for purposes of tax deductions, exemptions, rates and other features. Such classifications are to be sustained unless they are arbitrary and capricious.[63] The Court has, for example, upheld as reasonable classifications within the tax laws, the graduated nature of the income tax rates, imposing higher proportionate burdens on more wealthy taxpayers[64] and the taxation of domestic corporations in a fashion distinct from foreign corporations.[65]

The latitude granted to Congress in tax matters was emphasized in the Supreme Court's decision in *Commissioner* v. *Kowalski*[66] in which the Court ruled that highway patrol officers were required to pay tax on meal allowances granted them, even though similar allowances granted military personnel were expressly tax-free by statute. In relation to this disparity of treatment, the Court stated that:

> arguments of equity have little force in construing the boundaries of exclusions and deductions from income, many of which, to be administrable, must be arbitrary.[67]

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[62] *See*, *Buckley* v. *Valeo*, 424 U.S. 1 (1976); and *Weinberger* v. *Weisenfeld*, 420 U.S. 636 (1975).

[63] *Helvering* v. *Indiana Life Ins. Co.*, 292 U.S. 371 (1934).

[64] *Brushaber* v. *Union Pacific Railroad Co.*, 240 U.S. 1 (1916).

[65] *National Paper Co.* v. *Bowers*, 266 U.S. 373 (1924).

[66] 434 U.S. 77 (1977).

[67] *Id.* at 95-96.

11. HAS THE WITHHOLDING ACT BEEN REPEALED (VICTORY TAX ACT QUESTIONS)?

The original withholding act for withholding on wages was enacted as part of the Victory Tax Act of 1942.[68] This act was a temporary act and was scheduled to expire at the cessation of hostilities (World War II). The act did not expire, but was instead repealed by the Income Tax Act of 1944.[69] Previous to this repealing act, the Withholding Tax Act of 1943[70] had been enacted containing a withholding provision and not subject to an expiration date.

The present withholding provisions were enacted as part of the Internal Revenue Act of 1954[71] and continued as part of the Internal Revenue Code of 1986. While they have been amended, they have not been repealed.

12. WHEN WAS THE INTERNAL REVENUE SERVICE ESTABLISHED AND WHERE DOES IT GET ITS POWER TO TAX?

The Internal Revenue Service was established on July 1, 1862 by act of Congress.[72]

The Internal Revenue Service does not have the power to tax. Rather, it has been charged by Congress with the responsibility of administering and enforcing the internal revenue laws and related statutes which have been enacted by Congress.

13. WHAT IS THE LIBERTY AMENDMENT?

The Liberty Amendment is a proposed amendment to the United States Constitution which has been introduced several times over the past forty years. The proposal would repeal the Sixteenth Amendment (which authorized Congress to levy an income tax without apportionment among the states) and would preclude Congress from levying taxes on persons, incomes, estates, and/or gifts. It would also preclude the Federal Government from engaging in any business, professional, commercial, financial, or industrial enterprise except as specified in the Constitution.

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[68] Ch. 619, 56 Stat. 798, 77th Cong., 2nd Sess (1942).

[69] Ch. 210, 58 Stat. 231, 78th Cong., 2nd Sess (1944).

[70] Ch. 120, 57 Stat. 126, 78th Cong., 1st Sess. (1943).

[71] Ch. 736, 65A Stat. 1, 83rd Cong., 2nd Sess. (1954).

[72] Ch. 119, 12 Stat. 432, 37th Cong., 2nd Sess. (1862).

14. IS THE FEDERAL TELEPHONE EXCISE TAX USED TO FUND THE MILITARY?

The revenue from the telephone excise tax[73] goes into the general revenues of the Federal Government. It is not specifically earmarked for the military.

This question is based on the fact that this excise tax was increased from 3% to 10% in 1966,[74] at the request of the Johnson administration, to help meet the expense of the military effort in Vietnam.

Protesters of the war in Vietnam, and later those opposed to military spending in general, have used this tax as a vehicle for their protest because of the above mentioned historical connection with military funding and because it is a tax levied on most of the population which does not have a withholding system of collection. Refusal to pay the tax may, of course, result in the imposition of civil and/or criminal penalties.

15. DOES WITHHOLDING ON WAGES CONSTITUTE INVOLUNTARY SERVITUDE IN VIOLATION OF THE THIRTEENTH AMENDMENT?

The Thirteenth Amendment provides that "[n]either slavery nor involuntary servitude....shall exist in the United States...." Although the Supreme Court has upheld the constitutionality of income tax withholding, in the context of the corporate income tax, as early as 1916,[75] a few taxpayers have still contended, unsuccessfully, that to require an employer, without compensation, to withhold income taxes from the wages of employees places the employer in involuntary servitude in violation of the Thirteenth Amendment.[76] The courts have consistently and repeatedly held that a requirement of governmental service of this character does not constitute involuntary servitude. A government has the right to require certain actions of its citizens, including income tax withholding, jury service, and military service.[77]

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[73] IRC § 4251 through 4254.

[74] Pub. L. No. 89-368, 80 Stat. 38, 89th Cong., 2nd Sess. (1966).

[75] *Brushaber* v. *Union Pacific Railroad Co.*, 240 U.S. 1 (1916).

[76] *See*, for example, *Lorre, Jr.* v. *United States*, 40 A.F.T.R. 2d 5664 (W.D. Tex. 1977); and *United States* v. *Awerkamp*, 34 A.F.T.R. 2d 5086 (7th Cir. 1974).

[77] *See*, *Arver* v. *United States*, 245 U.S. 366 (1918); *Butler* v. *Perry*, 240 U.S. 328 (1916); and *Robertson* v. *Baldwin*, 165 U.S. 275 (1897).

16. ARE NOT INDIVIDUALS WHO ARE TOO YOUNG TO VOTE OR WHO ARE RESIDENTS OF THE DISTRICT OF COLUMBIA UNCONSTITUTIONALLY SUBJECTED TO TAXATION WITHOUT REPRESENTATION?

The argument has been suggested that individuals who are not 18 years of age and individuals residing in the District of Columbia should not be subject to Federal taxes because they do not have voting representation in Congress. Individuals who are not 18 years of age cannot vote for members of Congress or the President, and residents of the District of Columbia cannot elect voting representatives to Congress, although they may vote in Presidential elections.

The concept of no taxation without representation was a factor in the creation of this country and was embodied in the Declaration of Independence, but it is not an express guarantee of the Constitution. Rather, the Constitution establishes a representative form of government with elected officials for all adults, except those residing in the District of Columbia. As such, the Constitution permits taxation of both residents of the District and individuals who are disenfranchised because of age. This principle was clearly expressed by the Supreme Court in its decision in *Loughborough* v. *Blake*[78] in which Chief Justice Marshall stated;

> The difference between requiring a continent, with immense population, to submit to be taxed by a government having no common interest with it, separated from it by a vast ocean, restrained by no principle of apportionment, and associated with it by no common feelings; and permitting the representatives of the American people, under the restrictions of our Constitution, to tax a part of society, which is either in a state of infancy advancing to manhood, looking forward to complete equality as soon as that state of manhood shall be attained, as is the case with the territories; or which has voluntarily relinquished the right of representation, and has adopted the whole body of Congress for its legitimate government, as is the case with the district, is too obvious not to present itself to the minds of all.[79]

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[78] 18 U.S. 317 (1820).

[79] *Id.* at 324 to 325.

17. MAY CONGRESS TAX OCCUPATIONS OF COMMON LAW RIGHT?

Yes, Congress may tax "occupations of common law right" and has done so many times, for example the Social Security tax and the Federal income tax.

The argument has been made that earning a living is a right, sometimes called a "God given right" or a "common law right," and not a privilege and therefore it can not be taxed. Sometimes those presenting this argument would distinguish between natural occupations, i.e. farmer or rancher, and occupations created by the government, i.e government employee or lawyer, the later being taxable while the others are not. These types of distinctions have never been recognized in the area of taxing power of the states or the Federal government. The Supreme Court has specifically rejected a challenge to the Social Security tax based on this type of argument, stating:

> The statute books of the states are strewn with illustrations of taxes laid on occupations pursued of common right. We find no basis for a holding that the power in that regard which belongs by accepted practice to the legislatures of the states, has been denied by the Constitution to the Congress of the nation.[80]

In challenges to the Federal income tax, the courts have consistently rejected the claim that Congress may not tax occupations of common law right.[81]

18. WHAT IS THE FRIVOLOUS INCOME TAX PENALTY?

As part of the Tax Equity and Fiscal Responsibility Act of 1982,[82] Congress enacted a penalty for filing a frivolous income tax return. This penalty is codified at IRC § 6702.

The penalty is $500.00. It may be imposed on any individual who files any document which purports to be a tax return but fails to contain information from which the substantial correctness of the amount of tax shown on the return can be judged, or contains information which on its face indicates that the amount of the tax shown on the return is substantially incorrect and such conduct arises from a frivolous position taken by the taxpayer or a desire of the taxpayer, which is apparent from the face of the return, to delay or impede the administration of the tax laws.[83]

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[80] *Steward Machine Co.* v. *Davis*, 301 U.S. 548 at 582 to 583 (1937).

[81] *See*, for example, *United States* v. *Russell*, 585 F.2d 368 (8th Cir. 1978); *United States* v. *Silkman*, 543 F.2d 1218 (8th Cir. 1976), *cert. denied*, 431 U.S. 919 (1977); and *Jones* v. *United States*, 551 F. Supp. 578 (N.D.N.Y. 1982).

[82] Pub. L. No. 97-248, 97 Stat. 369, 97th Cong., 2nd Sess. (1982).

The penalty is immediately assessable. The taxpayer need not be given any advance warning before assessment. To challenge this penalty, the taxpayer must pay 15% of the penalty and file for a refund with the IRS. If the refund is denied, the taxpayer may seek review in the Federal District Courts.[84] The constitutionality of the frivolous return penalty has been upheld against challenge under the First Amendment[85] and the Due Process Clause.[86]

It should also be mentioned that the Federal courts may impose penalties for frivolous claims brought before them. These claims range from those which have no basis in fact or law (for example, claiming that payment of income taxes is voluntary) to those which may have been legitimate questions when first raised, but have been so definitively decided by the courts that they are a waste of the courts time to bring them up again (for example, questioning the constitutionality of taxing wages). The Seventh Circuit Court of Appeals has stated:

> The doors of this courthouse are, of course, open to good faith appeals of what are honestly thought to be errors of the lower courts. But we can no longer tolerate abuse of the judicial review process by irresponsible taxpayers who press stale and frivolous arguments, without hope of success on the merits, in order to delay or harass the collection of public revenues or for other nonworthy purposes ... abusers of the tax system have no licence to make irresponsible demands on the courts of appeals to consider fanciful arguments put forward in bad faith. In the future we will deal harshly with frivolous tax appeals and will not hesitate to impose even greater sanctions under appropriate circumstances.[87]

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[83] IRC § 6702.

[84] IRC § 6703.

[85] *Kahn* v. *United States*, 753 F.2d 1203 (3rd Cir. 1985).

[86] *Baskin* v. *United States*, 738 F.2d 975 (8th Cir. 1984).

[87] *Granzow* v. *Commr.*, 739 F.2d 265 at 268-269 (7th Cir. 1984).

The United States Tax Court has statutory power to assess a penalty of up to $5,000 on a taxpayer who brings a frivolous claim before it.[88]

The following is a list of some of the types of returns where IRC § 6702 has been invoked or arguments which have been found to be frivolous by the courts:

> (1) Fifth Amendment returns--taking the Fifth Amendment on all or most of the lines of the return;[89]
>
> (2) claims of a war tax deduction--reducing the tax due on ones taxable income by the percentage derived by dividing the budget of the Department of Defense by the total Federal budget;[90]
>
> (3) claims that wages are not taxable;[91]
>
> (4) gold standard returns--claiming no income because Federal reserve notes are not backed by gold or silver;[92]
>
> (5) claims that the Federal income tax is a voluntary tax--Privacy Act defects, alleged lack of liability section in the IRC, and misrepresentations of statements concerning voluntary compliance;[93]

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[88] IRC § 6673 which states:

> Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay, that the taxpayer's position in such proceeding before the Court is frivolous or groundless, or that the taxpayer unreasonably failed to pursue available administrative remedies, damages in an amount not in excess of $5,000 shall be awarded to the United States by the Tax Court in its decision.

[89] *See*, question 5 and the cases cited therein.

[90] *See*, *Wall* v. *United States*, 756 F.2d 52 (3rd Cir. 1985), and *Hollingshead* v. *Commr.*, TC Memo 1984-158 (1984).

[91] *See*, *Wardell* v. *United States*, 757 F.2d 203 (8th Cir. 1985), and question 7 and the cases cited therein.

[92] *See*, *O'Brien* v. *Commr.*, 779 F.2d 50 (6th Cir. 1985).

[93] *See*, *Donelin* v. *Commr.*, TC Memo 1984-131 (1984), and question 8 and the cases cited therein.

(6) claims of defects in the ratification of the Sixteenth Amendment--fraud by the Secretary of State, mistakes in ratification by the various states, failure of President to sign the proposed amendment, improper admission of Ohio into the Union;[94]

(7) failure to sign the return, striking out the perjury clause, or in other ways modifying the income tax return;[95]

(8) claims that the Tax Court system violates the taxpayer's right to trial by jury;[96]

(9) claims that the imposition of an income tax denies the taxpayer the freedom of contract;[97]

(10) establishing a "church" for the sole purpose of tax avoidance;[98] and

(11) claims that the tax laws are not legal because they were not enacted as positive law.[99]

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[94] *See, Pollard* v. *Commr.*, 816 F.2d 603 (11th Cir. 1987), and question 4 and the cases cited therein.

[95] *See, Mosher* v. *IRS*, 775 F.2d 1292 (5th Cir, 1985), and *Olson* v. *United States*, 760 F.2d 1003 (9th Cir. 1985).

[96] *See, Sauers* v. *Commr.*, 771 F.2d 64 (3rd Cir. 1985).

[97] *Id.*

[98] *See, Dummler* v. *Commr.*, TC Memo 1985-224 (1985).

[99] *See, Young* v. *IRS*, 596 F. Supp. 141 (N.D. Ind. 1984), and question 6, above.